

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH  
CENTRAL DIVISION

UNITED STATES OF AMERICA, )  
Plaintiff, )  
vs. ) Case No. 2:17-CR-37-FB  
CLAUD R. KOERBER, )  
Defendant. )  
\_\_\_\_\_)

BEFORE MAGISTRATE JUDGE PAUL. M. WARNER

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May 31, 2019

Pretrial Release Violation Hearing

Transcript Prepared from an Electronically Recorded Hearing

REPORTED BY: Patti Walker, CSR, RPR, CP 801-364-5440  
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A P P E A R A N C E S

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1 SALT LAKE CITY, UTAH; FRIDAY, MAY 31, 2019; 10:00 A.M.

2 PROCEEDINGS

3 MS. HACKFORD-PEER: Your Honor, were you  
4 pre-staffing with probation?

5 Is Annie Carr back there?

6 THE COURT: She's coming around. I wasn't  
7 pre-staffing. She just wanted to know if I had any  
8 questions, but I didn't. So I think we're good to go.

9 MS. OBERG: Your Honor, if I may, I believe our  
10 client is still at the marshal's office. If I can be  
11 excused to go get him.

12 THE COURT: Why don't you ask them to bring him up  
13 as quickly as possible.

14 MS. HACKFORD-PEER: And I have some documents for  
15 the Court.

16 MS. NESTER: Your Honor, can we remove the  
17 shackles, please?

18 THE COURT: No. That's a marshal determination,  
19 Ms. Nester. I think you know that.

20 All right. Are both sides ready?

21 MS. HACKFORD-PEER: Yes, Your Honor.

22 THE COURT: Court will come to order.

23 Good morning. We're here today in the case of  
24 United States vs. Claud R. Koerber. The case number is  
25 2:17-CR-37. It's been assigned to Judge Frederic Block.

1 The United States is represented by Ms. Ruth Hackford-Peer  
2 and Mr. Aaron Clark, assistant U.S. attorneys. The  
3 defendant is here and present in court and is represented by  
4 Ms. Kathy Nester, former federal defender here in Utah, and  
5 currently -- I forget your title, Ms. Nester. I believe  
6 it's executive director; is that correct?

7 MS. NESTER: Yes, sir.

8 THE COURT: For the Federal Defenders Office in  
9 San Diego, Southern District of California, as well as  
10 Ms. Daphne Oberg, who is an assistant federal defender here  
11 in the District of Utah.

12 As noted, Mr. Koerber is here and present in  
13 court.

14 The purpose of today's hearing is an initial  
15 appearance on an alleged violation of Mr. Koerber's release  
16 condition. In anticipation of the hearing, I received the  
17 petition, of course, itself, which has been amended once --  
18 the language was amended once.

19 And, Ms. Nester, just to make sure, do you have  
20 the current version that indicates violation of federal,  
21 state, and local law, to wit, tampered with records, et  
22 cetera?

23 MS. NESTER: Yes, sir, I do.

24 THE COURT: All right. Thank you.

25 So I've seen that. And I have also, of course,

1 reviewed the order setting conditions of release that was  
2 initially issued, I believe, by Judge Furse in 1217. And,  
3 of course, I have seen the pleadings filed by the United  
4 States. I'm sure that copies were provided to you,  
5 Ms. Nester, and to your colleagues.

6           Before we get to the substance of the matter,  
7 because this is a violation proceeding, Mr. Koerber, I'm  
8 obligated by law to inform you of your constitutional  
9 rights, and I'd like you to listen carefully. Under the  
10 Fifth Amendment to our Constitution, you're entitled to the  
11 right against self-incrimination. It's commonly called the  
12 right to remain silent. It simply means you don't have to  
13 make any statements about the alleged offense, or offenses,  
14 but if you do make statements, they can and likely will be  
15 used against you in a court of law. Do you understand me,  
16 sir?

17           THE DEFENDANT: Yes. I'm having a hard time  
18 hearing you, Your Honor, but I understand you.

19           THE COURT: All right. I'll speak up a little  
20 bit. Is that better?

21           THE DEFENDANT: Yes. Thank you.

22           THE COURT: Thank you.

23           The second right you have is obviously the right  
24 to counsel under our Sixth Amendment, but I believe that you  
25 are very competently and adequately represented at this

1 point by Ms. Nester and by Ms. Oberg, so I don't think I  
2 need to review that unless you intend to retain counsel on  
3 your own at this point.

4 THE DEFENDANT: I do not.

5 THE COURT: All right. Thank you.

6 With that, here's how I anticipate proceeding on  
7 this. First of all, let me ask you, as is the common  
8 practice on a violation, Ms. Nester, have you had time to  
9 review the nature of the allegation with Mr. Koerber?

10 MS. NESTER: I have, Your Honor.

11 THE COURT: And has he determined whether or not  
12 he chooses to admit or deny the allegation at this time?

13 MS. NESTER: He has, and we deny.

14 THE COURT: Mr. Koerber, could I have you stand,  
15 please. This is a formality, but I still want to go through  
16 that process.

17 I now ask you, sir, how do you plead to the single  
18 allegation in the petition, admit or deny?

19 THE DEFENDANT: Deny.

20 THE COURT: Thank you.

21 You may all be seated.

22 The record will reflect that the defendant,  
23 Mr. Koerber, has entered a denial as to the allegation in  
24 the petition. That will be received by the Court and  
25 entered into the record at this time.



1 I would like -- I'm assuming at this point,  
2 Ms. Hackford-Peer, that you're ready to go forward on the  
3 violation?

4 MS. HACKFORD-PEER: Yes, Your Honor.

5 THE COURT: And, Ms. Nester, I'm assuming that  
6 you're prepared as well?

7 MS. NESTER: Yes, sir.

8 THE COURT: Okay. Let me lay out a couple of  
9 so-called ground rules. The rules for these matters are  
10 relaxed pursuant to the statute. However, I know of -- at  
11 least I say I know of. I signed the subpoena yesterday for  
12 two witnesses. I saw one of them, Mr. Petersen -- is he  
13 here -- and the other is Mr. Belcher, or Belcher. Is it a  
14 hard C or a soft C?

15 MR. BELCHER: Belcher, Your Honor.

16 THE COURT: Belcher. Thank you, Mr. Belcher.

17 In a more formal setting, we would typically  
18 invoke an exclusionary rule. I'm happy to hear either side  
19 on that as far as would you like the exclusionary rule, or  
20 do you mind if they sit in? What's your preference?

21 Ms. Nester?

22 MS. NESTER: We're not asking for the rule to be  
23 invoked, Your Honor.

24 THE COURT: Okay.

25 MS. HACKFORD-PEER: That's fine with us,

1 Your Honor.

2 THE COURT: All right. Then we'll allow  
3 Mr. Belcher and Mr. Petersen to remain in the room during  
4 the pendency of the matter.

5 MS. NESTER: We do have some other witnesses. It  
6 wasn't necessary to subpoena them, Your Honor.

7 THE COURT: Okay. So here's how I see this going.  
8 I have reviewed the statute. And this is a little bit  
9 unusual because his release has actually occurred twice, by  
10 my review. The first would be the release by Judge Furse  
11 when he first, initially appeared. And then following his  
12 conviction, Judge Block made a determination to release him  
13 again, for want of a better word. The first would be under  
14 3142. The second would be under 3143. I believe this  
15 proceeding is controlled by 3148, which is sanctions on  
16 release for violation of release condition.

17 As I read that statute -- and I want to hear from  
18 both sides before we go forward with any evidence. As I  
19 read that statute, I believe that the standard for the  
20 violation -- and there's only one condition here, which was  
21 the defendant must not commit any offense in violation of  
22 federal, state, or local, or tribal law while on release in  
23 this case. That was the original condition. I didn't see  
24 any new conditions that were imposed other than the passport  
25 and travel restriction in that regard.

1           So as I read 3148, it appears to me that under  
2   3148(b)(1)(A), the standard for review of this violation is  
3   probable cause to believe that the person has committed a  
4   federal, state, or local crime while on release.

5           What's the position of the United States?

6           MR. CLARK: We agree with that, Your Honor.

7           THE COURT: Ms. Nester?

8           MS. NESTER: Your Honor, I believe the statute  
9   uses that language. I would like to -- I believe this  
10   matter is up before the Supreme Court right now on issues of  
11   whether or not the standard, when you're depriving someone  
12   of their liberty, should, in fact, be higher. So, just  
13   simply, in case that case turns out in our favor, I would  
14   like to go ahead and register an objection and say that I do  
15   believe that because these require factual findings that  
16   will involve the termination of his liberty, should the  
17   Court so find, that we would ask for a jury and we would ask  
18   for a beyond a reasonable doubt standard. I do recognize  
19   that's not the law right now, but it might be soon. So  
20   thank you, Your Honor.

21           THE COURT: Thank you. I will note your  
22   objection, and we'll proceed on the standards as enunciated  
23   by the statute.

24           Now before we begin the actual presentation of  
25   evidence, I'd like to have just a brief proffer from both

1 sides as to what we can anticipate by way of evidence for  
2 purposes of planning.

3 Ms. Hackford-Peer, I don't know if you or  
4 Mr. Clark are going to be the lead counsel, but I'd like to  
5 know which one is so I can kind of address one or the other.

6 MS. HACKFORD-PEER: Your Honor, I'm going to be  
7 taking testimony of Ms. Carr, and then Mr. Clark will be  
8 arguing.

9 THE COURT: Okay. So I take it that -- well, why  
10 don't you tell me, Ms. Hackford-Peer -- rather than me  
11 trying to tell you, why don't you tell me, what is it you  
12 anticipate by way of presentation of evidence this morning,  
13 on the violation?

14 By the way, I really didn't mention this, but I  
15 see this as a bifurcated proceeding, bifurcated in this  
16 sense. The first phase is on the violation. If I don't  
17 find a violation, that's the end of the proceeding. If I  
18 find a violation, then we go to the second phase of the  
19 proceeding, which I think falls under 1343 and Rule 46(c),  
20 which suggests that the burden of proof shifts to the  
21 defendant to prove by clear and convincing evidence that he  
22 doesn't represent an ongoing danger to the community.  
23 That's how I read it.

24 Do you see it differently, Ms. Nester?

25 MS. NESTER: No, sir.

1 THE COURT: Okay.

2 Ms. Hackford-Peer?

3 MS. HACKFORD-PEER: No.

4 THE COURT: All right. Thank you.

5 So with that, let me ask you, Ms. Hackford-Peer,  
6 just tell me briefly what it is you anticipate presenting on  
7 the violation proceeding.

8 MS. HACKFORD-PEER: I intend to call Annie Carr.  
9 We'll go through the six exhibits that I have here on the  
10 exhibit list. We expect to find that Mr. Koerber  
11 violated --

12 THE COURT: I don't need you to make any argument.  
13 That's what she's going to do. She's going to go through  
14 the exhibits?

15 MS. HACKFORD-PEER: Yes.

16 THE COURT: Then what else?

17 MS. HACKFORD-PEER: That's all I intend to do,  
18 Your Honor.

19 THE COURT: Okay. That will be your violation  
20 case?

21 MS. HACKFORD-PEER: Correct.

22 THE COURT: Then Mr. Clark will argue the case for  
23 you, correct?

24 MS. HACKFORD-PEER: Correct.

25 THE COURT: All right. Thank you.

1           Ms. Nester, what do you anticipate presenting on  
2 the violation portion?

3           MS. NESTER: Your Honor, we have five witnesses  
4 today, and there's a possibility that Mr. Koerber, depending  
5 on how the evidence goes, may ask to address the Court as  
6 well. And we do have exhibits that we'll be introducing  
7 through the witnesses, but I don't think it will take more  
8 than a couple of hours.

9           THE COURT: Okay. Fair enough.  
10          Are both sides ready to go at this point?

11          MS. HACKFORD-PEER: Yes, Your Honor.

12          MS. NESTER: Yes, sir.

13          THE COURT: Ms. Hackford-Peer, why don't you call  
14 your first witness.

15          MS. HACKFORD-PEER: The United States calls Annie  
16 Carr.

17          THE COURT: Ms. Carr, if you would step forward  
18 and raise your right hand, and be sworn, please.

19                       ANNIE CARR,  
20                       Having been duly sworn, was examined  
21                       and testified as follows:

22          THE COURT: Now, Ms. Carr, if you would step  
23 around into the witness box, have a seat there, and pull  
24 yourself up close to the microphone. Thank you.

25          Ms. Hackford-Peer, you may proceed.

DIRECT EXAMINATION

BY MS. HACKFORD-PEER:

Q Go ahead and state your name for the record, please.

A Annie Carr.

Q And how are you employed?

A I'm a U.S. Probation officer.

Q And what is your relationship to Mr. Koerber?

A He is a defendant that I'm currently supervising.

Q I'm going to give you some documents.

MS. HACKFORD-PEER: I have given the Court this binder as well. Defense counsel has the same documents.

BY MS. HACKFORD-PEER:

Q I want to talk with you about these documents today. Let's start by looking at Exhibits 1, 2, and 3.

THE COURT: Why don't we take them one at a time, Ms. Hackford-Peer.

MS. HACKFORD-PEER: Okay.

THE COURT: You say one, two, and three. I think it's easier if we just do them one at a time.

BY MS. HACKFORD-PEER:

Q Let's look at Exhibit 1. Are you familiar with that document?

A Yes.

Q Where did you get that document?

A I received these documents from --

1 Q Let's just talk about Exhibit 1.

2 A Okay. Exhibit 1.

3 THE COURT: For the record -- just to clarify.  
4 For the record, you're referring to the declaration of  
5 Kristi L. Turbin; is that correct?

6 MS. HACKFORD-PEER: Tubbin, I believe, Your Honor.

7 THE COURT: Tubbin. Excuse me. Okay.

8 Go ahead, Ms. Carr.

9 THE WITNESS: I received these via e-mail from  
10 Trisha Peterkin.

11 BY MS. HACKFORD-PEER:

12 Q And who is Trisha Peterkin affiliated with?

13 A The law firm of Peterkin Burgess.

14 Q And you received this document directly from the law  
15 firm Peterkin Burgess?

16 A Yes.

17 Q So what is Exhibit 1?

18 A This is a declaration of Kristi Tubbin.

19 Q And what's her position at that law firm?

20 A She is a legal assistant.

21 Q And in that document she talks about receiving a manila  
22 envelope with a notice of appeal inside of it; is that  
23 right?

24 A Yes.

25 Q And attached to that declaration is the notice of



1 appeal?

2 A Yes.

3 Q And that's an appeal for what case?

4 A The Fryberger vs. Edwards.

5 Q How is Mr. Koerber associated with that case?

6 A He is the paralegal for Morgan Philpot.

7 Q And Mr. Philpot represented the client that owes money  
8 in that case; is that right?

9 A Right.

10 Q And then if you go to page five of that document --  
11 actually let's go to page four of the notice of appeal. Do  
12 you see a certificate of service?

13 A Yes.

14 Q And what's the date of that certificate of service?

15 A March 2nd, 2019.

16 Q And if you turn the page, how was this delivered? Will  
17 you read the last --

18 A By a commercial delivery service with proof of dispatch  
19 attached.

20 Q And we're going to go to page 13 now of that document.  
21 What is that document?

22 A This looks like the -- I guess the receipt.

23 Q So the proof of dispatch?

24 A Yeah, the proof of dispatch.

25 Q Let's go over that dispatch notice a little bit. What

1 is the date on that dispatch notice?

2 A March 2nd, 2019.

3 Q And who is the client identified as?

4 A Morgan Philpot.

5 Q And there are a couple of e-mails listed under Morgan  
6 Philpot. Do you see that second e-mail?

7 A Yes.

8 Q Are you familiar with who that e-mail belongs to?

9 A That belongs to Mr. Koerber.

10 Q And that e-mail is crf&jmphilpot.com?

11 A Yes.

12 Q And this dispatch notice shows that this was dispatched  
13 to who to deliver?

14 A To Sarah Fryberger, the Oregon Court of Appeals, and  
15 the trial court.

16 Q Okay. Those are the three entities, it looks like,  
17 where the document was going to be delivered to; is that  
18 right?

19 A Right.

20 Q Who was going to do the delivering?

21 A Oh, I'm sorry. I'm sorry. Corvus Administration and  
22 Management.

23 Q Are you familiar with that entity?

24 A Yes.

25 Q And what is that entity?

1 A It is the business that Mr. Koerber had.

2 Q And the receipt shows that \$209.35 was paid to deliver  
3 these documents; is that right?

4 A Correct.

5 Q And then there's a signature on the bottom. Who do you  
6 believe that to be?

7 A The initials are CRK, which I believe would be Claud R.  
8 Koerber.

9 MS. HACKFORD-PEER: Your Honor, we move to admit  
10 Exhibit 1.

11 THE COURT: Any objection?

12 MS. NESTER: No, sir.

13 THE COURT: It will be received.

14 (Plaintiff's Exhibit 1 was received into  
15 evidence.)

16 BY MS. HACKFORD-PEER:

17 Q Okay. Let's go to Exhibit 2, Ms. Carr. Actually, can  
18 we go back to Exhibit 1 for just a minute?

19 Do you know Kristi Tubbin?

20 A No.

21 Q Where were these documents filed -- or what do these  
22 documents pertain to?

23 A With the Oregon Court of Appeals.

24 Q So will you read Ms. Tubbin's declaration on the second  
25 page of her document.

1 A Where do you want me to read?

2 Q The bold part.

3 A Okay. I hereby declare and affirm that the above  
4 statement is true to the best of my knowledge and belief,  
5 and that I understand it is made for use as evidence in  
6 court and is subject to penalty for perjury.

7 Q Now let's go to Exhibit 2. What is this document?

8 A This is a declaration of Michael Peterkin.

9 Q And did you similarly get this document from Trisha  
10 Peterkin?

11 A Yes.

12 Q And you got that directly from Trisha Peterkin?

13 A Yes.

14 Q Let's go over this declaration.

15 Mr. Peterkin attaches a number of documents to his  
16 declaration. I want to go over those quickly. Let's go to  
17 page four of 29.

18 A Okay.

19 Q What is this document?

20 A LCC certificate of organization of Corvus  
21 Administration and Management.

22 Q If you look at the seal at the bottom, when was this  
23 company incorporated?

24 A March 6th of 2019.

25 Q And if you look under Article III, there's a registered

1 agent name and address. Will you state the name and address  
2 identified there.

3 A It says Derrick O. Roebuck, 5526 West 13400th South,  
4 number 335, in Herriman, Utah, 84096.

5 Q Who do you believe Derrick Roebuck -- do you believe  
6 Derrick Roebuck is an actual person?

7 A I believe it's an alias for Mr. Koerber.

8 Q In that same declaration, Mr. Peterkin's declaration,  
9 if you'll go to page 26 of 29.

10 A Okay.

11 Q Will you identify the e-mail there.

12 A It's the same e-mail. It's crf@jmphilpot.com.

13 Q And the name associated there is C.R. Franklin,  
14 correct?

15 A Yes.

16 THE COURT: What page were you on?

17 MS. HACKFORD-PEER: Page 26 of 29.

18 THE COURT: I'm sorry. I thought you said six.

19 Go ahead.

20 BY MS. HACKFORD-PEER:

21 Q There is a photograph on that e-mail of C.R. Franklin.  
22 Do you recognize that person?

23 A Yes.

24 Q And who is that?

25 A The defendant.

1 Q So is C.R. Franklin a name that you know Mr. Koerber to  
2 go by?

3 A Yes.

4 Q And if we could turn the page now to page 27 of 29.  
5 What is this document?

6 A This is a document regarding Corvus Administration and  
7 Management.

8 Q And when did this company expire?

9 A June 27th of 2013.

10 Q So if we then go back to page --

11 MS. NESTER: I'm sorry, Your Honor. I am a little  
12 bit confused about the source of this document. I don't  
13 understand where that document came from. If I could just  
14 get some foundation, I probably don't have a problem with  
15 it.

16 BY MS. HACKFORD-PEER:

17 Q Can you read paragraph 13 of Mr. Peterkin's  
18 declaration?

19 A What page is it on?

20 Q It's on page three.

21 A Attached as Exhibit 8 is a true copy of the entity  
22 information page from the State of Utah, Department of  
23 Commerce, Division of Corporations & Commercial Code showing  
24 the previous registration of Curvus Administration and  
25 Management, LLC that expired as of 06/27/2013.

1 Q So if you'll turn the page now back to the new articles  
2 of incorporation. Does it appear that this is a  
3 reincorporation?

4 A I'm sorry. What page is that on?

5 Q Page four. I'm sorry. I should direct you. Page four  
6 of 29.

7 A Yes.

8 Q This appears to be a reincorporation of a company that  
9 had previously expired; is that right?

10 A Yes.

11 MS. HACKFORD-PEER: Your Honor, I move to admit  
12 Exhibit 2.

13 THE COURT: Any objection?

14 MS. NESTER: No, sir.

15 THE COURT: It will be received.

16 (Plaintiff's Exhibit 2 was received into  
17 evidence.)

18 BY MS. HACKFORD-PEER:

19 Q Okay, Ms. Carr. Let's move on to Exhibit 3. Where did  
20 you receive this document?

21 A Also from Trisha Peterkin.

22 Q And who is this a declaration of?

23 A Wendy Neff.

24 Q And who is Wendy Neff.

25 A She is an investigator.

1 Q And what did she do?

2 A She went to the address under the Corvus Administration  
3 and Management and took a picture.

4 Q Okay. So to be clear, she went to 5526 West 13400  
5 South in Herriman?

6 A Yes.

7 Q And what is at that location?

8 A It's a UPS store.

9 Q And did she note the hours of that UPS store?

10 A Yes.

11 Q And what would that store have been open on March 2nd,  
12 2019?

13 A March 2nd is a Saturday, and so they would have been  
14 open from 10:00 a.m. to 4:00 p.m.

15 MS. HACKFORD-PEER: Your Honor, I move to admit  
16 Exhibit 3.

17 THE COURT: Any objection, counsel?

18 MS. NESTER: No, sir.

19 THE COURT: It will be received.

20 (Plaintiff's Exhibit 3 was received into  
21 evidence.)

22 BY MS. HACKFORD-PEER:

23 Q Okay. Exhibit 4. Where did you receive -- first, are  
24 you familiar with this document?

25 A Yes.



1 Q Where did you receive this document -- or from whom?

2 A I received this from the Utah Division of Corporations.

3 I can't remember the entire name.

4 Q The Utah Division of Corporations & Commercial Code?

5 A Yes.

6 Q And did you receive that via e-mail?

7 A Yes.

8 Q What is Exhibit 4?

9 A This is a screen shot of what one would have to fill  
10 out to register a business online.

11 Q In the State of Utah, right?

12 A Yes.

13 Q So let's look at the second screen shot.

14 A Okay.

15 Q When a person fills out and signs a registration like  
16 this, what do they -- what are they declaring?

17 A I'm just going to read what it says.

18 Q Okay.

19 A I declare, under penalties of perjury and as an  
20 authorized authority, that this filing has been examined by  
21 me and is, to the best of my knowledge and belief, true,  
22 correct, and complete.

23 Q And then this document also makes reference to the  
24 electronic signature rules in the State of Utah; is that  
25 right.

1 A Yes.

2 MS. HACKFORD-PEER: Your Honor, I move to admit  
3 Exhibit 4.

4 THE COURT: Any objection?

5 MS. NESTER: No, sir.

6 THE COURT: It will be received.

7 (Plaintiff's Exhibit 4 was received into  
8 evidence.)

9 BY MS. HACKFORD-PEER:

10 Q Let's move on to Exhibit 5. Are you familiar with this  
11 document?

12 A Yes.

13 Q And where did you get this document?

14 A From the same person at Utah Division of Corporations &  
15 Commercial Code.

16 Q And what is Exhibit 5?

17 A This is a printout of what would be received. Once an  
18 individual registered a business, it would be received by  
19 them and by the Utah division.

20 Q So it's a recording of the answers when you do an  
21 online registration for a business; is that correct?

22 A Yeah. Yes, the application.

23 Q And what business is this the application materials  
24 for?

25 A Corvus Administration and Management.

1 Q And it's that UPS address in Herriman; is that correct?

2 A Yes.

3 Q Let's go to page five of that document, the last page.

4 Whose electronic signature is identified there?

5 A Claud R. Koerber.

6 Q Let's go back to page two of that document. The second

7 question there says what is the date you will start or did

8 start doing business. What did Mr. Koerber identify as the

9 date Corvus would start doing business?

10 A March 6, 2019.

11 Q Then if you go to page four of that document, who is

12 the registered agent?

13 A Derrick Roebuck.

14 Q And who is the manager?

15 A Claud Koerber.

16 Q And do you believe them to be the same individual?

17 A Yes.

18 Q So was Corvus incorporated in Utah on March 2nd, 2019?

19 A No.

20 MS. HACKFORD-PEER: I move to admit Exhibit 5,

21 Your Honor.

22 THE COURT: Any objection?

23 MS. NESTER: No, sir.

24 THE COURT: It will be received.

25 (Plaintiff's Exhibit 5 was received into

1 evidence.)

2 MS. HACKFORD-PEER: Can I have just a moment?

3 THE COURT: You may.

4 MS. HACKFORD-PEER: Your Honor, Exhibit 6 was  
5 already admitted as part of the Peterkin declaration, so I'm  
6 not going to move to admit that.

7 THE COURT: All right.

8 MS. HACKFORD-PEER: And I have no further  
9 questions for you, Ms. Carr.

10 THE COURT: Thank you.

11 Ms. Nester, I assume you're going to do the  
12 cross-examination?

13 MS. NESTER: Yes, sir.

14 THE COURT: You may proceed.

15 MS. NESTER: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MS. NESTER:

18 Q Good morning, Ms. Carr.

19 A Hello.

20 Q It's been a while. It's good to see you again.

21 A It's good to see you.

22 Q So I'd like to go back just a little bit. And before  
23 we even start, as Mr. Koerber's probation officer that he  
24 was to report to, did you ever look at his birth  
25 certificates? Have you ever reviewed them?

1 A No.

2 Q Do you know what his legal name is or if it's ever been  
3 changed?

4 A I don't know if it's ever been changed.

5 MS. NESTER: May I approach, Your Honor?

6 THE COURT: You may.

7 BY MS. NESTER:

8 Q I'm handing you two documents. They're copies. Can  
9 you look at those for a second.

10 THE COURT: I'm assuming counsel has a copy?

11 MS. NESTER: Yes, sir, they do. Thank you.

12 MS. HACKFORD-PEER: Can you direct us to which one  
13 you're looking at, though. We just have a pile.

14 Thank you.

15 BY MS. NESTER:

16 Q So in your experience as a probation officer, have you  
17 seen birth certificates before of people that you supervise?

18 A Yes.

19 Q Do those appear to be facsimiles of birth certificates?

20 A Yes.

21 Q All right. And the first one that's -- the one that's  
22 the long form that has the signatures on the bottom, what  
23 does that say Mr. Koerber's name at birth was?

24 A Claud Roderick Franklin.

25 Q And the short form that you have, what is the name on

1 that certificate?

2 A Claud Roderick Koerber.

3 Q Do you have any knowledge as to when that name was  
4 changed, or by whom, or why?

5 A The bottom -- the date issued is October 25th of 2010.

6 Q That's the date that the certification is issued. But  
7 you don't know when the actual birth certificate was  
8 changed?

9 A No. No.

10 Q Have you ever called or asked anyone about  
11 Mr. Koerber's legal name?

12 A No.

13 Q All right. Okay.

14 So I want to look at the documents that  
15 Ms. Hackford-Peer just went over with you. The first  
16 document that you talked about is a declaration signed by a  
17 legal assistant, right?

18 A Yes.

19 Q For a law firm in Oregon?

20 A Yes.

21 Q It's by a woman named Kristi Tubbin?

22 A Yes.

23 Q Have you ever spoken to Kristi Tubbin?

24 A No.

25 Q So you've never interviewed her yourself or discussed

1 this with her in any way?

2 A No.

3 Q Did you prepare this declaration for her?

4 A No.

5 Q Do you know who did?

6 A No.

7 Q In this declaration she claims that at 5:40 p.m. on  
8 March 8th of 2019, a slightly heavysset male with long, dark  
9 brown hair and a dark brown beard handed her a manila  
10 envelope, right?

11 A Uh-huh. (Affirmative)

12 Q Did you read that?

13 A Yes.

14 Q Did you ever send her a picture of Rick Koerber to ask  
15 her if that was him?

16 A No.

17 Q And did she ever tell you or anyone else that the  
18 person she saw was Rick Koerber?

19 A No.

20 Q Do you have any reason to know that that person was or  
21 was not Rick Koerber?

22 A No.

23 Q And basically that's the sum total of her information,  
24 is that she was hand delivered these documents relating to a  
25 civil case on March 8th, a little bit after five o'clock,

1 right?

2 A Yes.

3 Q From an unknown person?

4 A Yes.

5 Q Then you also have attached on there what she was  
6 delivered; is that right? She attaches that to her  
7 declaration?

8 A Yes.

9 Q And page 13 of 15 is a receipt from Corvus  
10 Administration and Management; is that right?

11 A Yes.

12 Q Do you know that to be the company that Rick Koerber is  
13 affiliated with?

14 A Yes.

15 Q And how do you know that?

16 A From the documents that I've received.

17 Q Did you ever ask Rick where he worked?

18 A No.

19 Q Have you ever asked Rick who Corvus Administration and  
20 Management is?

21 A No.

22 Q And when you look on that document, there's an initial  
23 MP. Do you know whose initials those are?

24 A I assume it's Morgan Philpot.

25 Q But you're assuming that?



1 A Right.

2 Q So if it turns out that's someone else's initials, you  
3 would not have any personal knowledge of that?

4 A Correct.

5 Q And if you go down underneath that box of the people to  
6 be delivered, there is a statement saying PDF to print plus.  
7 Do you know what that means?

8 A No.

9 Q Have you asked anyone what that means?

10 A No.

11 Q And then there's initials at the bottom, CRK. Do you  
12 recognize those initials?

13 A Yes.

14 Q And whose are those initials?

15 A Mr. Koerber's.

16 Q So you today have no personal knowledge of anything  
17 about this delivery other than what's in these two pages  
18 from this legal assistant in Oregon; is that right?

19 A That's correct.

20 Q Okay. Did you ever look up the docket of the civil  
21 case?

22 A No.

23 Q Did you explore at all what the civil case is about?

24 A No.

25 Q Or what allegations are being made about this law firm?

1 A No.

2 Q Did you ever read the Oregon statutes on delivery of  
3 process, or do any legal research, or ask for a legal  
4 opinion on what is permitted in the State of Oregon to  
5 deliver and serve process?

6 A No.

7 Q But you listed on the violation that he's committed a  
8 crime through the service of process, right?

9 A Right.

10 Q So what exactly about the service of process is  
11 criminal?

12 A So the information that I based the allegation on are  
13 these documents.

14 Q And nothing else?

15 A Correct.

16 Q Okay. So you don't know what allegations have been  
17 made about this law firm in this litigation?

18 A No.

19 Q And you don't know -- do you know how much money is  
20 involved?

21 A I believe on here somewhere it said above \$4 million.

22 Q All right. And do you know whether or not the Oregon  
23 court has addressed any of this in the context of the civil  
24 litigation?

25 A No.

1 Q Do you know -- on that document we were just looking  
2 at, page 13 of 15 -- never mind. I'll strike that.

3 All right. Do you know what the term dispatch means in  
4 Oregon law?

5 A No.

6 Q Okay. Let's go to Exhibit 2 of the Peterkin  
7 declaration. Now this is, in fact, a lawyer at the law firm  
8 involved in the \$4 million lawsuit; is that right?

9 A Yes.

10 Q Have you ever talked to Mr. Peterkin?

11 A No.

12 Q Have you ever reviewed the pleadings that were filed  
13 prior to all of this?

14 A No.

15 Q All right. On Government Exhibit 2, Ms. Hackford-Peer  
16 referred you to page four of 29 where there's a registered  
17 agent on this -- excuse me, Your Honor.

18 There's a registered agent on this new registration of  
19 Corvus, name of Derrick Roebuck, right?

20 A Right.

21 Q And you said you believe that's an alias of  
22 Mr. Koerber?

23 A Yes.

24 Q And what do you base that belief on?

25 A Information that we have in our system. I believe it's

1 in the presentence report.

2 Q It's in the presentence report. And do you know how it  
3 got in the presentence report?

4 A No.

5 Q Let me show you, now that you bring that up --

6 MS. NESTER: Your Honor, may I approach? I'm  
7 going to just show her the presentence report.

8 THE COURT: Yes, you may.

9 MS. NESTER: Thank you, Your Honor.

10 May I just stay here for one minute because I'm  
11 going to flip the page?

12 THE COURT: Yes.

13 BY MS. NESTER:

14 Q Do you recognize that document?

15 A Yes.

16 Q What is that?

17 A The presentence investigation report.

18 Q And the date that this report was prepared was what  
19 day?

20 A March 4th.

21 Q March 4th. All right. And on March 4th -- the way  
22 that it works, probation officers get information before  
23 they do this final report to the Court; is that right?

24 A Right.

25 Q And this report -- this first report that was issued on

1 March 4th, I want to bring your attention to paragraph 75.

2 MS. NESTER: Your Honor, since this is a sealed  
3 document, I'm not going to admit it. But there's one  
4 section that's not confidential.

5 THE COURT: At least as far as you're concerned.

6 MS. NESTER: Exactly.

7 BY MS. NESTER:

8 Q I'm going to ask you to read paragraph 71.

9 A The defendant reported being self-employed as a  
10 contract paralegal since 2013 under the business name of  
11 Corvus Administration and Management, LLC, and American Land  
12 Run, LLC. He reported he is usually paid as a 1099 status.  
13 He has not renewed his business registration with the Utah  
14 Department of Commerce since 2013, and stated he has not  
15 filed income taxes under the advice of counsel. He  
16 estimated grossing \$4500 monthly.

17 Q On March 4th, when your coworker -- when your coworker  
18 issued this report, Mr. Koerber had self-reported to her  
19 that he worked for Corvus Administration and Management,  
20 right?

21 A Yes.

22 Q And that he was an independent contractor, right?

23 A Yes.

24 Q And are you aware that he provided financial  
25 disclosures to Ms. Mary Schumann?

1 A I wasn't aware firsthand, but that is usually what  
2 happens.

3 MS. NESTER: May I approach, Your Honor?

4 THE COURT: You may.

5 MS. NESTER: Again, Your Honor, these are sealed,  
6 but if I could just review it with her.

7 BY MS. NESTER:

8 Q I'm going to show you an e-mail on top of a set of  
9 documents. Can you look at the middle e-mail and tell me  
10 the date that those documents were transmitted to the United  
11 States Probation Office?

12 A February 28th, 2019.

13 Q From whom?

14 A Jessica Stengel.

15 Q Do you know Jessica in the defender office?

16 A No.

17 Q It's all right.

18 And it mentions that it's enclosing what documents?

19 A Financial disclosures.

20 Q And if I can, have you reviewed all these financial  
21 disclosures?

22 A No.

23 Q Did you ask Mary what all Mr. Koerber told her and  
24 provided her?

25 A No.

1 Q Do you know that he provided her all the bank records  
2 for Corvus Administration and Management --

3 A No.

4 Q -- on February 28th?

5 A No.

6 Q You didn't know that?

7 A No.

8 Q All right. Can you tell me right here in the  
9 disclosures that were given to Ms. Schumann what is stated  
10 by Mr. Koerber?

11 A Mr. Koerber is the manager of Corvus Administration and  
12 Management, LLC. As the manager, Mr. Corvus controls a  
13 checking and savings account. Mr. Koerber does not own any  
14 stock or membership.

15 Q So he revealed to probation that he had this company  
16 and that's how you learned about it, right?

17 A Right.

18 Q But you never interviewed Mr. Koerber or even Mary  
19 Schumann about this company?

20 A No.

21 Q So as you sit here today, you don't know what that  
22 company does, do you?

23 A I only know what these documents say it does.

24 Q Those documents don't know who Corvus Administration  
25 is. Those people don't know who it is, do they? They're

1 from Oregon.

2 A No. The documents from the Utah Division of --

3 Q Okay. We'll get to those. That's fair. Thank you for  
4 clarifying that. We'll get to that in just one minute.

5 All right. Also in Mr. Peterkin's -- so Mr. Peterkin,  
6 who's the lawyer, is asserting that -- and just to sum up,  
7 kind of like we did with Ms. -- I forgot her name already --  
8 Ms. Tubbin, just to summarize Mr. Peterkin's affidavit, he  
9 is basically claiming that -- sorry, one second -- that he  
10 believes the notice of appeal was improperly served; is that  
11 right?

12 A Correct.

13 Q And do you understand the basis for why he says that  
14 it's improperly served?

15 A Yes.

16 Q All right. And did you ever -- did you ask a legal  
17 opinion, or a lawyer to explain to you how the service of  
18 process -- if Mr. Peterkin's opinion is correct about  
19 service of process?

20 A No.

21 Q And there is an allegation here where he is claiming on  
22 information and belief that Rick Koerber is also Rick  
23 Franklin; is that right?

24 A Correct.

25 Q And he attaches e-mails, right?



1 A Right.

2 Q And the e-mail has Mr. Koerber's picture on it?

3 A Right.

4 Q So Mr. Koerber wasn't hiding who he was. His picture  
5 was on his e-mail, right?

6 A Uh-huh. (Affirmative)

7 Q And Mr. Koerber has -- those are actually Mr. Koerber's  
8 legal names, Koerber and Franklin; is that right?

9 A Correct.

10 Q And there's apparently also some Web page, I don't know  
11 where he got it from, called About Me, and that is on  
12 page -- that's attached to his affidavit -- Mr. Peterkin's  
13 affidavit, and it is page number --

14 A Twenty-five.

15 Q Yes. Thank you. With a picture of Mr. Koerber, an  
16 explanation of what he does, and both his names, Koerber and  
17 Franklin; is that right? Do you see that at the top, Rick  
18 Koerber, Claud R. Koerber Franklin?

19 A Yes.

20 Q On a public document, right?

21 A Yes.

22 Q And Mr. Peterkin has no personal knowledge about Corvus  
23 Administration in his affidavit, does he? He doesn't know  
24 anything about that company?

25 A I'm sorry. Say that again.

1 Q Mr. Peterkin, in Government Exhibit 2, he has no  
2 personal knowledge about the company Corvus Administration,  
3 does he?

4 A I don't think so. I couldn't say.

5 Q It's not in his declaration?

6 A Right.

7 Q Are you also aware in Mr. Peterkin's affidavit he talks  
8 about whether or not -- let me find it. Just a moment.

9 So Mr. Peterkin is complaining that the registration of  
10 Corvus -- the reregistration of Corvus that happened on  
11 March 6th happened after his dispatch date, is that right,  
12 of March the 2nd?

13 A Yes.

14 Q So he thinks because they weren't registered with the  
15 Department of Commerce, that they weren't a real company, or  
16 that they didn't exist?

17 A Right.

18 Q Did you ever ask anyone or make any investigation about  
19 whether Corvus Administration and Management existed and  
20 operated under any capacity before the dispatch of these  
21 documents that were filed in the civil suit?

22 A Well, based on the documents that were received from  
23 the Utah Division of -- whatever that long name is, it  
24 looked like it was expired.

25 Q Do you know what that means under the law when a

1 company's business registration expires?

2 A No.

3 Q Do you know what legal effect that has?

4 A No.

5 Q Do you know what's required to reregister a company?

6 A No.

7 Q Do you know why companies register with the Department  
8 of Commerce?

9 A I mean I can guess, but no, not necessarily.

10 Q Let's look, then, at Government's Exhibit 5 while we're  
11 talking about that. This is the document that you received  
12 that was filled out when they reregistered on March the 6th;  
13 is that right?

14 A Right.

15 Q And when they reregistered the document on March 6th --  
16 go to the second page.

17 First of all, let's look at the first page.

18 MS. NESTER: This is Government's Exhibit 5,  
19 Your Honor.

20 BY MS. NESTER:

21 Q The very first question that they ask is do you have a  
22 federal employer identification number. Is that asked  
23 there?

24 A Yes.

25 Q And what's the answer?

1 A Yes.

2 Q And do you know what a federal identification number  
3 is?

4 A Yes.

5 Q What is that?

6 A It's the way the government identifies employees --  
7 employers. I'm sorry.

8 MS. NESTER: And may I approach, Your Honor?

9 THE COURT: You may.

10 BY MS. NESTER:

11 Q I'm going to approach you right now and see if you  
12 recognize this document.

13 A I know what it is.

14 MS. NESTER: Your Honor, while she's looking at  
15 that, can we go ahead and move to admit the two facsimile  
16 copies of the birth certificates as Defense Exhibits 1 and  
17 2?

18 THE COURT: Any objection, counsel?

19 MS. HACKFORD-PEER: No objection, although you may  
20 want to redact them.

21 MS. NESTER: We'll do that. We'll redact and then  
22 resubmit it at a break, or something. Thank you.

23 THE COURT: What are you going to redact?

24 MS. HACKFORD-PEER: Birth date, personal  
25 information.

1 THE COURT: That kind of thing. Okay. I thought  
2 you meant the names.

3 MS. NESTER: I think that's the point.

4 THE COURT: Typically we would redact names. All  
5 right. They'll be received.

6 MS. NESTER: Thank you.

7 (Defendant's Exhibits 1 and 2 were received into  
8 evidence.)

9 BY MS. NESTER:

10 Q Do you recognize that document?

11 A Uh-huh. (Affirmative)

12 Q What is that document?

13 A It's a document from the IRS assigning an employer  
14 identification number.

15 Q Can you speak up just a little bit.

16 A It's a document from the IRS assigning an employer  
17 identification number.

18 Q To whom?

19 A To Corvus Administration.

20 Q Who's it addressed to, the letter?

21 A The Corvus Administration -- I'm sorry. Claud Koerber.

22 Q What's the date on that letter from the IRS?

23 A March 5th, 2012.

24 Q 2012. So seven years before what we're talking about  
25 right now?

1 A Correct.

2 Q Is that right.

3 A Uh-huh. (Affirmative).

4 MS. NESTER: Your Honor, I move to admit this as  
5 Defense Exhibit 3.

6 MS. HACKFORD-PEER: No objection.

7 THE COURT: It will be received.

8 (Defendant's Exhibit 3 was received into  
9 evidence.)

10 BY MS. NESTER:

11 Q Now let's go back to Government's Exhibit 5.

12 I want to go back to Government's Exhibit 5. So the  
13 first question basically says there is a federal employer  
14 identification number, and that's true, based on what you  
15 just saw, correct?

16 A Correct.

17 Q All right. Then if we could go down to page two of the  
18 document where it says what is the date you will start or  
19 did start doing business, right?

20 A Right.

21 Q And there's a date of the day that he files, which is  
22 March 6th, 2019?

23 A Yes.

24 Q When you got these documents, did you speak to anyone  
25 at the Department of Commerce in person, or did they just

1 send you the documents?

2 A No. They just sent me the documents.

3 Q Do you know what they advise people to fill out on  
4 these forms in terms of that date?

5 A No.

6 Q Do you know what would have happened if Mr. Koerber had  
7 put the actual date of 2012 of when the business was first  
8 started and tried to put it in there? Do you know what  
9 would happen on the form?

10 A No.

11 Q If you could go to the middle of the page, what is the  
12 title of that box?

13 A Previous account information.

14 Q When does it say it was originally applied for?

15 A March 5th of 2012.

16 Q And that indicates that on this form, at some place,  
17 Mr. Koerber, or whoever filled out this document, advised  
18 that this company had previously registered, correct?

19 A Correct.

20 Q All right. Then if you go down a little bit further to  
21 physical business locations, do you see the address on  
22 there, which you've said is the address of the UPS store,  
23 right?

24 A Yes.

25 Q Did you interview anyone in the UPS store?

1 A No.

2 Q Do you know how long Mr. Koerber has maintained a  
3 business box there for Corvus?

4 A No.

5 Q If you could go to the -- flip two more pages to the  
6 box that's titled ownership and management information. Do  
7 you see that?

8 A Yes.

9 Q What is Claud Koerber's position?

10 A Manager.

11 Q What are Jewel Franklin and John Belcher's positions?

12 A Members.

13 Q Members. All right. If you recall, in Government  
14 Exhibit number -- I believe it's four, they showed you a  
15 sample of what it looks like when you swear you're going to  
16 tell the truth and not commit perjury, right?

17 A I'm sorry. Where are you looking?

18 Q Government's Exhibit 4.

19 A Okay.

20 Q Thanks.

21 A Yeah.

22 Q That was the sample that you got?

23 A Yes.

24 Q On the second page of that there's a perjury statement,  
25 correct?



1 A Correct.

2 Q And it's to be signed by whom? A member?

3 A Oh, yes. Uh-huh. (Affirmative)

4 Q Is there any requirement that the manager sign under  
5 penalty of perjury?

6 A No.

7 Q Do you have any evidence that Claud Koerber is a member  
8 of Corvus Administration?

9 Do you know the difference?

10 A I assume to be a manager you'd have to be a member, but  
11 I don't know.

12 Q At the very last page of this document, who is listed  
13 as the electronic signature?

14 The very last page of Government's Exhibit 5. Sorry.

15 A Claud Koerber.

16 Q And what is his title there?

17 A Manager.

18 Q How did this situation very first come to your  
19 attention?

20 A I was in training and I got an e-mail from -- I believe  
21 it was from our assistant deputy chief.

22 Q All right. And how did your assistant deputy chief  
23 become aware of this situation?

24 A I don't know.

25 Q Is it fair to say that you became aware of it after the

1 first PSR was returned, March the --

2 A Yes. Yes.

3 Q So before Mr. Koerber self-reported that he was Corvus  
4 Administration and Management, there was no investigation  
5 into this at all, right?

6 A Not that I'm aware of.

7 Q And then --

8 MS. NESTER: One moment, Your Honor.

9 BY MS. NESTER:

10 Q Have you made any investigation into the credibility of  
11 the law firm that's making these allegations?

12 A No.

13 Q And according to the receipt that was issued by  
14 Mr. Philpot -- or by Corvus Administration, the total amount  
15 paid to Mr. Koerber for this service of process was \$240; is  
16 that right?

17 A I thought it was 209.

18 Q You're right. It's 209. \$209 total --

19 A Right.

20 Q -- is what was earned by Mr. Koerber, right?

21 A Yeah.

22 Q And have you found any evidence that Mr. Koerber made  
23 any representations or submitted any documents at all to any  
24 court in Oregon?

25 A Say that again.

1 Q Have you found any evidence that Mr. Koerber, not  
2 Mr. Philpot, but Mr. Koerber ever made any representations  
3 to a court in Oregon?

4 A No.

5 MS. NESTER: Just one moment, Your Honor. If I  
6 could just have a minute.

7 BY MS. NESTER:

8 Q Before you filed a revocation claim against  
9 Mr. Koerber, did you look into any evidence about how long  
10 he's been monitored by your office?

11 A I know that he's been supervised by our office this  
12 last time since he first appeared, I believe, before  
13 Judge Furse.

14 Q All right. And before that, are you aware of him being  
15 supervised?

16 A Yes.

17 Q For how long?

18 A Several years.

19 Q And you looked through his whole file?

20 A Yeah, I've looked through the file.

21 Q And this is the first violation in over a decade that  
22 he's been accused of; is that right?

23 A I believe so.

24 MS. NESTER: That's all I have. Thank you,  
25 Your Honor.

1 THE COURT: Thank you.

2 Ms. Hackford-Peer, any redirect?

3 MS. HACKFORD-PEER: No, Your Honor.

4 THE COURT: Do you have any additional information  
5 or evidence you would either like to proffer or submit on  
6 the violation issue?

7 MS. HACKFORD-PEER: Mr. Clark would like to argue  
8 it when it's appropriate, but no additional evidence.

9 THE COURT: All right. Thank you.

10 Ms. Nester, do you have information or evidence  
11 you'd like to proffer at this time on the violation issue?

12 MS. NESTER: I do, Your Honor.

13 THE COURT: Okay. Go ahead, please.

14 MS. NESTER: We're not going to re-call her.

15 THE COURT: Thank you. I'm enjoying myself so  
16 much here.

17 Ms. Carr, thank you. I appreciate your testimony.  
18 You may step down.

19 MS. NESTER: Your Honor, at this point we would  
20 like to call Probation Officer Greg Petersen.

21 THE COURT: Mr. Petersen, if you'll step forward,  
22 please.

23 Please raise your right hand.

24 //

25 //

1 GREG PETERSEN,

2 Having been duly sworn, was examined

3 and testified as follows:

4 THE COURT: Thank you.

5 Mr. Petersen, if you'd step around and have a seat  
6 in the witness box, please, and pull yourself close to the  
7 microphone.

8 You may proceed, Ms. Nester.

9 MS. NESTER: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY MS. NESTER:

12 Q Good morning, Mr. Petersen.

13 A Good morning.

14 Q Thank you for being here on short notice.

15 A You're welcome.

16 Q This won't take long.

17 Can you --

18 MS. NESTER: I believe the Court knows you well.

19 There's no need for an introduction, Your Honor.

20 THE COURT: I do know Mr. Petersen.

21 BY MS. NESTER:

22 Q Can you tell me at what period of time you were tasked  
23 by the Court -- I mean, by the District of Utah to supervise  
24 Mr. Koerber?

25 A From approximately June of 2009 to October of 2013.

1 Q So four years?

2 A About.

3 Q And during that period of time, how would you describe  
4 the -- well, strike that. It doesn't matter.

5 Were you aware that he was employed during that time?

6 A Yes.

7 Q And did you question him -- I mean, I know it's been a  
8 long time and I'm sure you don't remember, but it is regular  
9 in your course of supervision to question people about their  
10 current employment?

11 A Yes, it is.

12 Q And to verify their current employment?

13 A Yes.

14 Q And I asked you to look back through your file and see  
15 if you had done that back then, true?

16 A Correct.

17 Q And the earliest evidence you had of his employment was  
18 from a law office; is that right?

19 A Correct.

20 Q And what is the name of that law office?

21 A It says Corvus Law Group, LLC.

22 Q And what was the date of that pay period when he was  
23 employed there?

24 A The pay stub that I had in our system was November  
25 11 -- excuse me, November 1st, 2011 through November 15th of

1 2011.

2 Q So at the end of 2011, he was employed by a law group  
3 of Corvus Law Group, LLC; is that right?

4 A Yeah, at least through November, from my records.

5 Q And at the very bottom of the paycheck there's an  
6 address for this law firm?

7 A Yes.

8 Q What is that address?

9 A 15 West South Temple, Suite 1000, Salt Lake City.

10 MS. NESTER: Your Honor, can I move to admit a  
11 copy of the pay stub as Defense Exhibit No. 4?

12 THE COURT: Any objection, Ms. Hackford-Peer?

13 MR. CLARK: No objection, Your Honor.

14 THE COURT: All right. Well, thank you,  
15 Ms. Hackford-Peer. That document will be received.

16 (Defendant's Exhibit 4 was received into  
17 evidence.)

18 BY MS. NESTER:

19 Q At some point later did you ever receive correspondence  
20 from a gentlemen named Morgan Philpot?

21 A Yes.

22 Q And what was the date of that correspondence?

23 A Well, the date says December 28th of 2012. It was time  
24 stamped in our office June 13th of 2013. So I'm not exactly  
25 sure if there was some type of clerical error, but that's

1 when we received it in our office was June 13th of 2013.

2 Q And actually in the body of the letter it refers to  
3 something that occurred in February of '13, right?

4 A Correct.

5 Q So it appears pretty clear that the date on the letter  
6 is some type of an error, because it would be impossible,  
7 right?

8 A That would be what I'd surmise.

9 Q But according to your date stamp, you received this on  
10 or around June 13th of 2013?

11 A Correct.

12 Q And do you have that document in front of you?

13 A Yes, ma'am.

14 Q And does that document verify that Mr. Koerber was  
15 working in a legal capacity as a law clerk and paralegal for  
16 Mr. Morgan Philpot at least from February of '13 through  
17 June of 2013?

18 A The first line, if I could just read it, says I  
19 employee -- it looks like a typo -- I employ Mr. Koerber as  
20 my law office administrator and as my personal law  
21 clerk/paralegal.

22 Q And tell me, if you can, what he says his primary  
23 duties of Mr. Koerber were?

24 A Mr. Koerber's primary duties include drafting  
25 engagement agreements, participating in client



1 consultations, legal strategy discussions, conducting  
2 thorough legal research, and drafting preliminary documents  
3 and legal filings.

4 Q And did you follow up with Mr. Philpot and ask whether  
5 or not Mr. Koerber was an independent contractor or a W-2  
6 employee?

7 A I don't recall. I did go back through my notes, and I  
8 remember I drove out to the address listed here, which I  
9 believe might have been Mr. Philpot's personal residence,  
10 and not feeling comfortable, I just kept driving. And I  
11 don't remember if I made a phone call after that or not.

12 Q But at least this letter does verify there was some  
13 type of employment relationship between Mr. Philpot and  
14 Mr. Koerber as far back as June of 2013?

15 A Yes.

16 MS. NESTER: Your Honor, I move to admit this as  
17 Defense Exhibit 5.

18 MR. CLARK: No objection, Your Honor.

19 THE COURT: Thank you. It will be received.

20 MS. NESTER: Thank you, Your Honor.

21 (Defendant's Exhibit 5 was received into  
22 evidence.)

23 BY MS. NESTER:

24 Q During the time that you supervised Rick Koerber, did  
25 he ever attempt to abscond the district?

1 A Not that I'm aware of.

2 Q Was he ever accused of using drugs or alcohol  
3 inappropriately?

4 A Not that I'm aware of.

5 Q Did he ever pose a danger to anyone in the community?

6 A Not that I'm aware of.

7 Q Did he ever violate and cause you to revoke him, ever?

8 A He did violate a couple of times as far as missing  
9 checks-ins, and I think one time he moved without getting  
10 permission. But that was stuff that we just verbally  
11 admonished him and moved forward.

12 Q The situation where he moved without getting  
13 permission, do you recall the circumstances around that?

14 A I don't -- I remember he was living in Highland and  
15 then relocated to Herriman.

16 Q Would it refresh your memory to hear that he was  
17 evicted without notice?

18 A It wouldn't but that could have been the case.

19 Q So if someone got evicted without notice, it would be  
20 impossible for them to let you know ahead of time that they  
21 were moving, right?

22 A Fair.

23 Q And over that four-year period, you never made any  
24 reports to the Court or recommended that he should be  
25 incarcerated or any sanctions taken against him; is that

1 right?

2 A Correct.

3 MS. NESTER: That's all I have for this witness,  
4 Your Honor.

5 THE COURT: Thank you.

6 Who's going to handle the cross-ex?

7 MR. CLARK: Me, Your Honor, but we don't have any  
8 cross-examination.

9 THE COURT: You don't have any. Thank you.

10 Mr. Petersen, thank you for your testimony, sir.  
11 You're excused and may step down.

12 MS. NESTER: Your Honor, at this point I would  
13 like to call Mr. John Belcher to the stand.

14 THE COURT: All right. Mr. Belcher, if you'll  
15 please step forward.

16 MS. NESTER: I've lost -- I'm not used to the  
17 dryness anymore, Your Honor. I need some water.

18 THE COURT: Well, it's hard to -- please raise  
19 your right hand and be sworn.

20 JOHN BELCHER,

21 Having been duly sworn, was examined

22 and testified as follows:

23 THE COURT: Mr. Belcher, if you would please come  
24 over here and have a seat. Pull yourself up close to the  
25 microphone, if you would, please.

1 I was just going to say, Ms. Nester, that if you  
2 think it's dry here, we've had the second wettest spring on  
3 record. It rains constantly.

4 MS. NESTER: Left just in time.

5 THE COURT: So to say it's dry is gilding the lily  
6 a little bit. But go ahead.

7 DIRECT EXAMINATION

8 BY MS. NESTER:

9 Q Good morning.

10 A Good morning.

11 Q Would you please introduce yourself to Judge Warner?

12 A My name is John Belcher.

13 Q And, John, how are you related to Rick Koerber?

14 A I am his brother-in-law.

15 Q So you are married to his --

16 A My wife is his wife's sister.

17 Q Correct. How long have you been his brother-in-law?  
18 How long have you all been married?

19 A Well, I've been married longer than he has. So I  
20 think -- I want to say at least probably nine years.

21 It's okay for me to forget the anniversary of their  
22 wedding, isn't it?

23 Q Yes, it is.

24 A Okay.

25 Q So I wanted to address with you the formation, or the

1 inception, if you will, of the company Corvus Administration  
2 and Management, LLC. Do you remember when that company was  
3 created?

4 A Yes, I do.

5 Q What year was that?

6 A 2012, and I think we formally registered it in 2013.

7 Q If the registration documents showed you registered it  
8 in March of 2012, would you disagree with that?

9 A No. I'd say that's absolutely correct.

10 Q So tell me, if you can, or tell Judge Warner, if you  
11 can, why you all created Corvus Administration and  
12 Management.

13 A For me to hopefully one day make some money with it.  
14 But we wanted to form a business to perform services that --  
15 honestly, for Rick's family to make some money. I wanted to  
16 make some money. Just like any business, we wanted to make  
17 some money.

18 Q What was the nature of the business that Corvus was  
19 going to engage in?

20 A Legal services. We delivered process. We -- I mean, I  
21 didn't do the writing. Rick did the writing. I actually  
22 was more hands off. I was ownership and not involved in the  
23 day-to-day per se.

24 Q When you guys opened the company was there a bank  
25 account affiliated with the company?

1 A Yes.

2 MS. NESTER: May I approach, Your Honor?

3 THE COURT: You may.

4 BY MS. NESTER:

5 Q Do you recognize that document?

6 A Yes, I do.

7 Q What is that document?

8 A It's the inception of the bank account. It's the form  
9 we had to fill out.

10 Q And what is the name of the organization that the  
11 account was opened up under?

12 A Mountain America Credit Union.

13 Q No. I mean the name of the business.

14 A I apologize. Corvus Administration and Management,  
15 LLC.

16 Q And then if you look back on the back page, who is the  
17 signing manager?

18 A The manager is Claud R. Koerber.

19 Q And that's his real name, right?

20 A Correct.

21 Q And you also heard -- you were in the courtroom --

22 MS. NESTER: Your Honor, can I move this as  
23 Exhibit 6 of the defense?

24 THE COURT: Any objection?

25 MS. HACKFORD-PEER: No, Your Honor.

1 THE COURT: It will be received.

2 (Defendant's Exhibit 6 was received into  
3 evidence.)

4 BY MS. NESTER:

5 Q You were in the courtroom when you heard Ms. Carr, the  
6 probation officer, testify about the registration listing a  
7 registered agent under the name of Derrick Roebuck?

8 A Yes, correct.

9 Q Tell me who Derrick Roebuck is.

10 A It's an alias. It's an anagram.

11 Q And why did you guys use an alias name for the  
12 registered agent of Corvus Administration?

13 A At that time when we formed the company, a lot of the  
14 legal troubles that Rick was in -- in the legal world, we  
15 didn't want people Googling Rick Koerber and finding his  
16 name, and then harassing our attorneys' clients. It would  
17 be bad for business. It would be horrible.

18 Q So to your knowledge, have you ever been aware of Rick  
19 Koerber using the name Derrick Roebuck at any point in the  
20 business of Corvus Administration other than listing it as a  
21 registered agent name?

22 A No. That was the only time we ever used it.

23 Q And the registration is public, like you said?

24 A That is correct.

25 Q It can be Googled?

1 A It can be accessed by anybody at any time.

2 Q When people would pay Corvus Administration for their  
3 services, who would they pay?

4 A They would pay Corvus Administration.

5 Q But who personally would they pay?

6 A Rick Koerber.

7 Q Was there ever any doubt about who ran Corvus  
8 Administration the entire time that you worked in it?

9 A Not at all.

10 Q During the time that you worked in Corvus  
11 Administration, how often, if ever, did you ever serve  
12 process or deliver papers for law firms?

13 A The company, fairly often. Even personally, I served a  
14 few back in 2013.

15 Q When you guys would serve those documents, you'd get  
16 paid for that, right?

17 A Correct.

18 Q When you guys opened the first -- when you first opened  
19 Corvus, did you get any advice from anyone about the proper  
20 way to do that?

21 A We got lots of advice. At that time we had to cross  
22 all our t's and dot all our i's as best we could.

23 Q And that's because Rick was in trouble, right?

24 A That is correct.

25 Q So you were being super careful?



1 A That is correct.

2 Q So who did you talk to?

3 A We consulted some of the attorneys that we knew and  
4 worked with. We also -- the Department of Commerce in the  
5 registration.

6 Q So when you talked to the Department of Commerce, what  
7 specific advice were you seeking?

8 A What would be -- was there any additional paperwork,  
9 anything we had to fill out in order to use the registered  
10 agent that we used or the proper format to register the  
11 company.

12 Q What, if anything, did you tell them about wanting to  
13 use an alias name as a registered agent?

14 A It's a long time ago. We -- as I recall, again, on a  
15 phone conversation, we said is there any problem using an  
16 alias, and they said no. Is there any way to register an  
17 alias? They said no.

18 Q All right. And then when you got -- now I want to move  
19 forward. So from starting in 2012, about how many years was  
20 Corvus active and working for law firms?

21 A It's been continually active.

22 Q And do you know about how many different clients Corvus  
23 has had over the years, law firms and lawyers?

24 A Maybe 500.

25 Q And I want to move forward now to 2019. Okay?

1 A Okay.

2 Q Was there an occasion in February or early March where  
3 Rick Koerber and/or Jewel, his wife, had a conversation with  
4 you about needing to register -- update the registration of  
5 Corvus?

6 A Yeah, there was.

7 Q What do you remember about that? Talk slow.

8 A I apologize.

9 Q Okay.

10 A They came down to our new house in Spanish Fork and  
11 stayed with us for a few days, and at that time it was after  
12 sentencing, the case --

13 Q You mean the conviction, not the sentencing?

14 A I apologize. I don't know all the -- what it's all  
15 called. But yes, after the conviction.

16 And they were -- there was some concern that the  
17 company being expired -- I don't know if it was the  
18 probation and parole or if it was the prosecutor's office,  
19 but whatever report they were working on, we determined it  
20 was probably best to cross our t's and dot our i's and  
21 register the company and make sure everything was the way it  
22 should be.

23 Q So when you talked to Rick about it, what has his  
24 concern about why it needed to be done right away? Do you  
25 remember?

1 A To the best of my knowledge, when we talked about it,  
2 the concern was that, hey, they're going to take the fact  
3 that this company is not registered and say I'm not  
4 employed, it's not a real company, something to that effect.

5 Q And this was early March, because you guys registered  
6 March the 6th, right?

7 A Yeah. It would have been the first week of March.

8 Q So were you aware that he received his copy of his  
9 probation report either March 1st or March 2nd, shortly  
10 thereafter?

11 A I don't know that I'm aware that he received it, but,  
12 yeah, that would be that. I know we were talking about that  
13 information and that's probably where that information came  
14 from.

15 Q During the time that you all were talking about needing  
16 to satisfy probation, did you ever talk about anything to do  
17 with a case in Oregon?

18 A No. I don't -- again, we didn't talk about any of the  
19 day-to-day or the -- I wasn't involved in a lot of the  
20 day-to-day activities.

21 Q When you guys went to reregister the company, did you  
22 talk to anyone in the Department of Commerce then about how  
23 to do that?

24 A Yes.

25 Q Who did you talk to?

1 A I don't have a name. We just called the number on the  
2 website.

3 Q And what did you ask them?

4 A Well, the main concern was when we tried to register  
5 the company, it wouldn't let us put the date that we  
6 actually formed the company.

7 Q Why is that?

8 A Because it's a Web form and it just puts a big red  
9 error and says you filled this out wrong, and try again. It  
10 only allows you to put that day's date or a future date.  
11 And we asked them how to proceed.

12 Q And what did they tell you?

13 A They said put today's date. It happens all the time.  
14 It's fairly normal. You know, the old company, we've got it  
15 in our system, and that's how it's always done.

16 MS. NESTER: One moment, Your Honor, with the  
17 Court's indulgence.

18 BY MS. NESTER:

19 Q So when you guys reregistered, what decision, if any,  
20 did you make about who to list as the members and the  
21 manager of the company?

22 A Jewel and I are the owners, the members, if you will,  
23 for the LLC. So we listed us as the members, and we  
24 determined to list Rick as a manager. Even though they  
25 don't require it, we wanted to be transparent.

1 Q What about the registered agent?

2 A The registered agent, we kept it the same it has been  
3 because that was the company that they had on file.

4 Q And this was after his probation report had discussed  
5 this name and you guys left it on there?

6 A That is correct.

7 Q And why didn't you change it?

8 A Because we didn't want to -- I mean, it was known. It  
9 was one that had already been out there, and we didn't want  
10 to make it look like we were changing or trying to hide  
11 something.

12 MS. NESTER: That's all I have.

13 Thank you, Your Honor.

14 THE COURT: Thank you.

15 Cross-examination.

16 MS. NESTER: Your Honor, would you like the  
17 exhibits I've already marked?

18 THE COURT: Yes.

19 MS. NESTER: We will need to redact.

20 MS. HACKFORD-PEER: No questions, Your Honor.

21 THE COURT: I have a couple.

22 Mr. Belcher, I've heard it referred to as Corvus  
23 Law Group and also Corvus Management -- Administration and  
24 Management services. Are those two separate entities?

25 THE WITNESS: The legal entity -- the law group

1       formed into the management group. It is separate.

2               THE COURT: What do you mean it formed into?

3               THE WITNESS: I apologize. Morphed into. The  
4       previous group was Corvus Law Group. I wasn't involved with  
5       that at all. The only thing I can testify to is Corvus  
6       Administration that we formed in 2012 and 2013.

7               MS. NESTER: I do think I can clear that up with  
8       another witness, Your Honor.

9               THE COURT: Okay.

10              So you were involved in the incorporation in 2013;  
11       is that correct?

12              THE WITNESS: Not incorporation, Your Honor,  
13       organization.

14              THE COURT: Organization. Excuse me.

15              And what was the purpose of that organization?

16              THE WITNESS: We just wanted to get aboveboard.  
17       To open a bank account, you need to organize with the state.

18              THE COURT: What was the purpose -- what was the  
19       stated purpose of the business?

20              THE WITNESS: Oh, the business purpose. It was  
21       always legal service. It was always -- I've always, when  
22       I've formed a business, put any legal business purpose. But  
23       it was to perform management services, specifically  
24       targeting towards law groups and law firms.

25              THE COURT: You said you had over 500 clients.

1 THE WITNESS: I'm guesstimating on that,  
2 Your Honor. Several hundred at least.

3 THE COURT: Give me five.

4 THE WITNESS: Give you five clients? Again, I'm  
5 not involved in the day-to-day, but you've got Philpot Law.  
6 You've got Skousen. A gentleman over on 90th South. He's a  
7 bigger fellow. I don't remember his name, the law firm  
8 there as well.

9 Again, that wasn't my role. I didn't manage or do  
10 the day-to-day.

11 THE COURT: What did you do?

12 THE WITNESS: I was an owner, Your Honor. I was a  
13 member.

14 THE COURT: You didn't do any actual work?

15 THE WITNESS: Yes, Your Honor.

16 THE COURT: Yes as in yes you did or yes you did  
17 not?

18 THE WITNESS: You are correct, Your Honor. I did  
19 not do much actual work after 2013.

20 THE COURT: You appeared on the documents as an  
21 owner, but not actively involved in the business, correct?

22 THE WITNESS: Actively involved? There is an  
23 actual legal term on their incorporation, actively involved,  
24 yes. But I was not actively involved in the day-to-day. I  
25 have a full-time job and work elsewhere.

1 THE COURT: On this reregistration that just  
2 occurred recently, in March of this year, we talked about  
3 we, we meaning you and I'm assuming Mr. Koerber?

4 THE WITNESS: Yes, Your Honor.

5 THE COURT: We registered it. Did you do that  
6 together, or did you do that or did he do that?

7 THE WITNESS: It was myself, Rick Koerber, and  
8 Jewel as well.

9 THE COURT: All sitting at the computer at the  
10 same time because it was done online?

11 THE WITNESS: Sitting around the kitchen table  
12 with a laptop.

13 THE COURT: And what time of the day did you do  
14 that?

15 THE WITNESS: I'm going to say -- Your Honor, I  
16 don't exactly remember what time of day it was.

17 THE COURT: Was it in the evening?

18 THE WITNESS: We sat down twice. The first time  
19 we tried to register, we couldn't use the date we wanted.  
20 We called back, and the following day is when we completed  
21 the registration.

22 THE COURT: And they said to use today's date?

23 THE WITNESS: Correct.

24 THE COURT: That being March 6th.

25 THE WITNESS: That is correct.



1 THE COURT: And the prior Corvus organization  
2 expired on June 27th of 2013?

3 THE WITNESS: That is correct.

4 THE COURT: Is it your understanding that that  
5 organization was a lawful entity after that point when the  
6 business registration expired?

7 THE WITNESS: To my understanding, yes.

8 THE COURT: Are you a lawyer?

9 THE WITNESS: I'm not a lawyer.

10 THE COURT: Did you seek legal counsel on that?

11 THE WITNESS: Not specifically on that.

12 THE COURT: And what's the basis of your opinion?

13 THE WITNESS: The company doesn't cease to exist.

14 THE COURT: I didn't say it didn't cease to exist.  
15 I said was it lawfully organized at that point?

16 THE WITNESS: My basis for that is that the IRS  
17 still had us -- had given us the tax ID number. We still  
18 were an entity. We weren't -- just like a sole  
19 proprietorship, it's still an entity.

20 THE COURT: You continued to do business, although  
21 you didn't do any yourself, correct?

22 THE WITNESS: The company continued to do  
23 business, that is correct.

24 THE COURT: How much money were you making off  
25 this?

1 THE WITNESS: I didn't make any money. The idea  
2 was that once all the legal smoke cleared from this case,  
3 that we could really take off and run a good business.

4 THE COURT: So you've never made a dime off of  
5 this; is that correct?

6 THE WITNESS: I might have made a couple dollars  
7 when I served process papers back in 2013.

8 THE COURT: But, essentially, Mr. Koerber has just  
9 asked you to use your name on the documents; is that  
10 correct?

11 THE WITNESS: No, that's not correct.

12 THE COURT: Well, you haven't done any work.

13 THE WITNESS: I've done some work, but not much.

14 THE COURT: Okay. So what is it you've done in  
15 the last six years to demonstrate that you have more than an  
16 ownership interest in this?

17 THE WITNESS: I don't have more than an ownership  
18 interest in this.

19 THE COURT: All right.

20 Now the stated purpose of Corvus Administration is  
21 business administration and management services. That  
22 doesn't sound like law work to me, yet you've described this  
23 business as primarily involved in legal business and legal  
24 service of process. Why did you state the business -- the  
25 purpose of the business is business administration and

1 management services?

2 THE WITNESS: That's what we do. We manage  
3 businesses. I had come off owning my own business, and that  
4 was one of the services they provided for me was helping  
5 me --

6 THE COURT: In your testimony with Ms. Nester you  
7 talked about primarily legal services, did you not?

8 THE WITNESS: There was a need and there was  
9 opportunity, and that's what was available at the time. But  
10 we're not limited, by any means, to legal businesses.

11 THE COURT: You say you served process a couple of  
12 times, Mr. Belcher?

13 THE WITNESS: Yes, Your Honor.

14 THE COURT: Was that here locally or was that out  
15 of state?

16 THE WITNESS: That was here locally.

17 THE COURT: All right. Thank you.

18 Any redirect, Ms. Nester?

19 MS. NESTER: No, Your Honor.

20 THE COURT: Any cross-ex based on my few  
21 questions?

22 MS. HACKFORD-PEER: No, Your Honor.

23 THE COURT: All right. Thank you.

24 Mr. Belcher, thank you for your testimony, sir.  
25 You are excused. You may step down.

1 MS. NESTER: Your Honor, at this time I would like  
2 to call Russ Skousen to the stand.

3 THE COURT: Mr. Skousen.

4 Please raise your right hand.

5 RUSSELL SKOUSEN,

6 Having been duly sworn, was examined

7 and testified as follows:

8 THE COURT: Sir, if you'd come around and have a  
9 seat in the witness box, and pull yourself up close to the  
10 microphone, please.

11 DIRECT EXAMINATION

12 BY MS. NESTER:

13 Q Good morning.

14 A Good morning.

15 Q Mr. Skousen, would you please introduce yourself to  
16 Judge Warner.

17 A I'm Russell Skousen, an attorney in Utah.

18 Q How long you have been an attorney?

19 A Since 1991.

20 Q And during the time that you've been barred in Utah,  
21 have you also had jobs other than purely legal?

22 A Yes. I've been in-house counsel. I've been the  
23 executive director of the Department of Commerce.

24 Q Which governor appointed you to that position?

25 A Huntsman.

1 Q And when did you leave the Department of Commerce?

2 A August 2005.

3 Q And since then you've been in private practice?

4 A Yes.

5 Q And what type of business do you -- what type of law do  
6 you engage in generally? What's the general nature of your  
7 practice?

8 A I'm really one of the few general practitioners out  
9 there, so I -- but real estate, estate planning, business,  
10 outside and inside general counsel work.

11 Q All right. And during the time that you were at the  
12 Department of Commerce and also during the time you've been  
13 in private practice, have you ever had to deal with issues  
14 relating to registering LLCs for clients?

15 A Very often.

16 Q Okay. And tell me, if you can, what is the purpose for  
17 a limited liability corporation -- that's LLC, right? What  
18 is the purpose for an LLC to register with the Department of  
19 Commerce?

20 A Well, one of the key benefits of either incorporating,  
21 if you're a corporation, or organizing, if you're a limited  
22 liability company, is so that the owners of the company do  
23 not -- do not incur personal liability for the activities of  
24 the company or corporation.

25 Q And harkening back to law school, it's something akin

1 to a corporate veil around your personal liability; is that  
2 right?

3 A Right.

4 Q And if your registration lapses, and I think  
5 Judge Warner used this term just a few minutes ago, you no  
6 longer have that legal entity designation, right?

7 A So what happens if you fail to file your annual report,  
8 you become administratively suspended. And then that  
9 suspension then becomes dissolution if you do not seek to  
10 reinstate your company within two years.

11 Q And if you're suspended and ultimately -- by the way,  
12 how often does this happen to companies?

13 A Very often.

14 Q And when a company's registration lapses, what's the  
15 legal effect of once their legal entity status is dissolved,  
16 what does that mean?

17 A Well, so if a company reinstates within two years, then  
18 whatever activities were done between the time of suspension  
19 and reinstatement, it relates back as though you were never  
20 suspended. And so you have -- you have that corporate shell  
21 reinstated for all of your past activities.

22 Q And what happens if your lapse extends past two years?

23 A So if it extends past two years, you're no longer able  
24 to do what's called reinstating, but you can form a new  
25 entity that has a new entity number with the state, and your

1 activities between the time of dissolution of the company  
2 and forming a new company of the same name do not enjoy the  
3 protection -- the members or owners of the company do not  
4 enjoy that corporate shield for the activities in that time.

5 Q What, if any, legal impact does this lapse that makes  
6 you vulnerable as a business owner to personal liability,  
7 what, if any -- what, if any, effect does that have on your  
8 ability to continue doing business as a business in the  
9 State of Utah?

10 A As a practical sense, it doesn't affect your ability to  
11 continue to do business, but you're exposed to personal  
12 liability. You don't have that protection of the corporate  
13 shield.

14 Q So the people that get hurt when you don't register is  
15 yourself, right, because you're opening yourself up to  
16 liability?

17 A Right. Individuals that interact with a company that's  
18 been expired, if they sue the company, they can also go  
19 after the assets. If they win a judgment, they can go after  
20 the assets of the owners of that company.

21 Q In all of the time that you've been practicing and when  
22 you were at the Department of Commerce, are you ever aware  
23 of anyone being prosecuted or held criminally responsible  
24 for not reregistering their company with the Department of  
25 Commerce?

1 A Not ever.

2 Q Okay. All right.

3 After a company's registration lapses, are their  
4 records still available to be viewed by anyone in the  
5 public?

6 A Anyone in the public can get on the website of the  
7 Division of Corporations & Commercial Code and do a search,  
8 and the search will come up with names and entities of  
9 expired and active companies. There is certain information  
10 that is available without paying a fee, but if you pay like  
11 a dollar or two, you can get all of the documents that have  
12 been filed with the state, all the annual reports. You will  
13 also get a breakdown of who the managers and owners are, and  
14 so forth, that's been reported.

15 Q Just to refresh our memory, what does it mean when you  
16 use the phrase D as in dog, B as in boy, A, dba, what does  
17 that mean?

18 A It means doing business as.

19 Q And when someone -- are there any restrictions through  
20 the Department of Commerce of a person's ability to do  
21 business as a company without being registered?

22 A No. You do not have to register a dba, but there are  
23 certain rights and opportunities that are foreclosed to you  
24 if you do not register.

25 Q And is it common or have you seen in your experience



1 that people use names other than their own when they're  
2 establishing businesses?

3 A All the time. You may have heard the term sole  
4 proprietor.

5 Q Right.

6 A A sole proprietor is someone who either does a business  
7 in their own name or does it under a name they've made up,  
8 but they're not a recognized legal entity separate from the  
9 owner of that business.

10 Q Okay. Are you aware -- are there examples, for  
11 example, in our own community where people do business as a  
12 name that is not actually their name?

13 A Well, I'm familiar -- there's a law firm that does  
14 business here and in a couple other states, at least  
15 California. They're called Lincoln Law, and part of their  
16 logo is a silhouette of what looks like Abraham Lincoln. I  
17 don't think he owns that or has anything to do with that  
18 company, but I think the idea is that they like that sense  
19 of we're country lawyers, Honest Abe type attorneys. But to  
20 my knowledge, none of the attorneys have Lincoln in their  
21 name at all -- their personal names.

22 Q Also the registered agent that was used in these  
23 registration documents was an individual or an anagram  
24 Derrick Roebuck?

25 A Right.

1 Q What is the significance of listing a registered agent  
2 with the Department of Commerce?

3 A The purpose of having a registered agent is so that  
4 either the Department of Commerce or anyone who is wanting  
5 to make contact with a company has an address and someone  
6 that will receive the correspondence that is intended to go  
7 to the operators of that company.

8 Q And you were here when we talked about -- or when  
9 Ms. Hackford-Peer talked about the investigator that went to  
10 the address listed for the registered agent and it's a  
11 business box at a UPS store. Did you hear that?

12 A Yes.

13 Q Does that pose any problems? Can you list a P.O. Box  
14 as the place where the company collects its correspondence?

15 A Well, so the government can have various addresses for  
16 a company. There is a place where you do business. There  
17 can be an address for where the registered agent can be  
18 contacted. So companies very often will use like a UPS  
19 store for doing that, and that's kind of a gray area because  
20 they don't like to have P.O. boxes. But a UPS store, that's  
21 kind of --

22 Q It doesn't look like a P.O. Box. It's an actual  
23 business box?

24 A Right.

25 Q Okay. That's interesting.

1 All right. Do you personally know Rick Koerber?

2 A I do.

3 Q How long have you known Rick Koerber?

4 A Since September of 2005.

5 Q And when you -- starting in 2012 --

6 A Excuse me. August of 2005.

7 Q And fast-forward to 2012, which is when this company  
8 that's at issue here, Corvus Administration, was  
9 incorporated. Did you ever become aware at some point that  
10 Rick did business under that company name?

11 A Yes.

12 Q How did you become aware of that?

13 A He told me. I believe it was 2015 that I became aware  
14 of that.

15 Q And at that time were you hiring him to do work for  
16 you?

17 A Yes.

18 Q What type of work did he do for your firm?

19 A He did research and writing, screening new cases coming  
20 in. He helped with some office administration types of  
21 things. And there was also at least one occasion where I  
22 had his company effect process in an eviction case.

23 Q Did you hire him as a W-2 employee or was he an  
24 independent contractor?

25 A Independent contractor.

1 Q And when you paid him, how was the -- how were the  
2 checks addressed, or who was it addressed to when you paid  
3 him?

4 A Corvus Administration.

5 Q Did he ever at any time that he worked for you -- so  
6 what was the period of time where he actually worked for you  
7 and did jobs for you?

8 A Beginning at the end of -- the latter part of 2015.

9 Q Up until even now?

10 A Yeah.

11 Q During all this time, has he ever used the name Derrick  
12 Roebuck to conduct any business with you or a client?

13 A No.

14 MS. NESTER: May I approach?

15 THE COURT: You may.

16 BY MS. NESTER:

17 Q Do you recognize that? It's a redacted document. Do  
18 you recognize it?

19 A I do.

20 Q When did you provide that to me?

21 A This morning.

22 Q And what is that?

23 A It is a redacted copy of a bank account for my law  
24 firm, my operating account, and it is a bank statement  
25 covering the month of December 2015.

1 Q What's attached to the cover sheet?

2 A So attached to the cover sheet is a photocopy of check  
3 number 0891 made out to Corvus Administration for \$2,000.

4 Q Do you remember what it was for? I mean, if it's  
5 privileged, don't say.

6 A I don't.

7 Q And what does that represent, that payment?

8 A It just represents legal support services that I paid  
9 him for.

10 MS. NESTER: Your Honor, may I introduce this as  
11 Defense Exhibit 7?

12 THE COURT: I don't know if you may or not, but we  
13 can find out.

14 MR. CLARK: No objection, Your Honor.

15 THE COURT: It will be received.

16 (Defendant's Exhibit 7 was received into  
17 evidence.)

18 MS. NESTER: With the Court's indulgence for just  
19 a moment.

20 BY MS. NESTER:

21 Q So since you have been employing Corvus Administration  
22 for a period of years, how would you rate the reliability of  
23 those services? If you asked something to be done, how  
24 reliable is it that it's going to be done with this company?

25 A Quite reliable. It may be 11:59 p.m., but it gets

1 done, and it gets done very well.

2 Q So you have confidence in this company and you continue  
3 to employ them?

4 A Yes.

5 Q And did you ever become aware at any time that this  
6 company was engaging in any type of dishonesty with you or  
7 your clients?

8 A No.

9 MS. NESTER: That's all I have, Your Honor.

10 THE COURT: Thank you.

11 Cross-examination.

12 MR. CLARK: Yes, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. CLARK:

15 Q Mr. Skousen, good morning still.

16 You mentioned you were at the Department of Commerce.  
17 How long was that?

18 A About nine months.

19 Q And why did you leave?

20 A I could not -- when I initially took the job from  
21 Governor Huntsman, I told him up front that I couldn't  
22 afford to do the job very long, but I would help get some  
23 things done that the transition committee had identified  
24 that needed to be done at the Department of Commerce, but  
25 that if the salary could be increased to measure up with

1 other department heads, that I could stay.

2 His position was all cabinet level officers should  
3 receive the same pay, and so he authorized legislation to be  
4 proposed that would put all cabinet officers on equal  
5 footing. We tried that. And over the summer, it didn't  
6 happen. It couldn't happen. The legislature actually was  
7 set to approve only my salary to be increased, and we didn't  
8 think that was a good idea, so I left.

9 Q So you weren't asked to leave by anybody in the  
10 administration?

11 A Well, what happened was, because the legislation didn't  
12 pass, a staff member of mine was looking around for maybe an  
13 option for me. And then a friend of mine offered to give me  
14 a loan. I did not take the loan, but that went to the  
15 governor and he just said, nah, I don't want that to -- if  
16 that gets out, that wouldn't look good.

17 Also -- and I agreed. I never even seriously  
18 considered taking that loan.

19 Also there was some controversy over a division head  
20 that I terminated with the governor's and chief of staff's  
21 approval, also the approval of my successor in the office.  
22 He was head of the Division of Consumer Services, a part of  
23 it, but he was sort of the utility advocate for small  
24 businesses. And so I terminated him. That was quite  
25 controversial, including cartoons of the governor kicking

1 this poor man out of office.

2 So anyway, it was a mutual departure. But, yeah, I was  
3 asked to go.

4 Q Okay. Now you didn't mention this in your direct  
5 testimony, but you're actually related to Mr. Koerber; is  
6 that right?

7 A By marriage. His wife is my first cousin once removed.

8 Q Okay. And you mentioned that he has done some work for  
9 you, but there was a time when you were actually working for  
10 him, right?

11 A That is correct.

12 Q You actually have been a part of both of the trials  
13 that we've had for Mr. Koerber's case, right?

14 A I have been a witness at both trials.

15 Q And why were you a witness?

16 A I was general counsel at one of his companies after I  
17 left.

18 Q Which one was that?

19 A FranklinSquires.

20 Q What about Founders Capital?

21 A No.

22 Q And I didn't take your testimony or your  
23 cross-examination at trial, but am I remembering right that  
24 you testified at some point that you got a business opinion  
25 from Mr. Koerber on the way that Founders Capital was being



1 run?

2 A I arranged for Mr. Koerber's companies to get a number  
3 of legal opinions on various aspects of how his companies  
4 were being run.

5 Q And you got those opinions, but you're aware that a  
6 jury of his peers found that he was committing fraud with  
7 those companies, right?

8 A I'm aware of the verdict.

9 Q Okay. And you mentioned -- you mentioned that he's  
10 been a great employee for you. Have you ever asked  
11 Mr. Koerber to backdate any filings?

12 A Never.

13 MR. CLARK: One moment, Your Honor.

14 Nothing further.

15 THE COURT: A couple of questions from the Court,  
16 Mr. Skousen. I appreciate you being here this morning.

17 It sounds like you left -- what was the official  
18 name of the office you worked at?

19 THE WITNESS: Executive director of the Department  
20 of Commerce.

21 THE COURT: Thank you. It sounds like you left by  
22 mutual agreement.

23 THE WITNESS: Yes.

24 THE COURT: Is that a fair statement?

25 THE WITNESS: Yes.

1 THE COURT: All right. That was after nine  
2 months?

3 THE WITNESS: So actually eight and a half months.  
4 August 15th, 2005 was my last day.

5 THE COURT: Mr. Belcher testified earlier that --  
6 I'd asked him to name five attorneys or law offices he'd  
7 worked for. He mentioned Skousen. Would you be one of  
8 those?

9 THE WITNESS: It would be my law firm, Skousen Law  
10 firm. It was Skousen and Penny previously.

11 THE COURT: Did Mr. Belcher do any work for you?

12 THE WITNESS: He did that one service of process  
13 on the eviction matter, but that's the only thing --

14 THE COURT: Did Mr. Koerber do any work for you on  
15 the eviction?

16 THE WITNESS: Yeah. He helped draft pleadings and  
17 so forth, but the actual service of process of the summons  
18 and complaint was done by Mr. Belcher.

19 THE COURT: Now you alluded -- and I don't  
20 remember, candidly, whether it was from Ms. Nester or  
21 Mr. Clark -- that you found Mr. Koerber's work  
22 satisfactory -- or maybe better than satisfactory. I don't  
23 remember the exact adjective. But then you said, and I  
24 wrote this down, and I'm paraphrasing, but he had the  
25 tendency at the last minute -- to do things at the last

1 minute, or 11:59, so to speak. Can you just expand on that  
2 a little bit for the Court.

3 THE WITNESS: Well, Rick does a lot of work for a  
4 lot of different people, and sometimes we don't get a  
5 pleading drafted and filed until the deadline. It's just  
6 the nature of the practice at times. But --

7 THE COURT: Did that happen on more than one  
8 occasion?

9 THE WITNESS: Yeah, a number.

10 THE COURT: A number of times?

11 THE WITNESS: Yes.

12 THE COURT: Did it tend to be a pattern, for want  
13 of a better word?

14 THE WITNESS: Yeah, that -- not every pleading,  
15 but often enough that it was --

16 THE COURT: Pattern is a fair word?

17 THE WITNESS: -- irritating to me.

18 THE COURT: I can understand that.

19 Thank you, Mr. Skousen. I have no further  
20 questions.

21 MS. NESTER: Can I follow up on what Your Honor  
22 just asked?

23 THE COURT: You may.

24 //

25 //

1 REDIRECT EXAMINATION

2 BY MS. NESTER:

3 Q In all the time that Mr. Koerber has worked for you,  
4 has he ever missed a deadline?

5 A There may have been once. I don't remember a specific  
6 instance. But it's just one of those times you just beg for  
7 forgiveness.

8 Q But you can't remember any?

9 A I don't remember a specific time.

10 Q Okay. Thanks.

11 THE COURT: Any recross, Mr. Clark?

12 RECROSS-EXAMINATION

13 BY MR. CLARK:

14 Q Mr. Skousen, are you aware of Mr. Koerber missing  
15 filing deadlines in this case?

16 A No. I'm not involved in those matters.

17 Q So if he had missed multiple deadlines, you wouldn't be  
18 aware of it?

19 A No, not directly.

20 THE COURT: All right. Anything else, Ms. Nester,  
21 on this witness?

22 MS. NESTER: No, Your Honor.

23 THE COURT: Mr. Skousen, thank you for your  
24 testimony. You may step down. You're excused.

25 Ms. Nester, who do intend to call next?

1 MS. NESTER: Morgan Philpot, Your Honor.

2 THE COURT: Mr. Philpot, hold on one moment,  
3 please.

4 We've been going for almost two hours. Let's take  
5 a ten-minute break, or until noon, to give our court  
6 reporter a little break. And I would like you all to  
7 reconvene promptly at noon straight up, if you would,  
8 please, and then we'll hear from Mr. Philpot.

9 MS. NESTER: Thank you, Your Honor.

10 THE COURT: Court's in recess.

11 (Recess)

12 THE COURT: Be seated, please.

13 Just one moment, Mr. Philpot.

14 Mr. Simms, before we call the Court to order,  
15 would you come to the bench, please.

16 (Discussion held off the record.)

17 THE COURT: Court will come to order.

18 Good afternoon. I believe it is now afternoon.

19 We're back in session in the case of U.S. vs. Koerber --  
20 Koerber, excuse me. And, Mr. Philpot, if you'll step  
21 forward and raise your right hand and be sworn.

22 MORGAN PHILPOT,

23 Having been duly sworn, was examined

24 and testified as follows:

25 THE COURT: Sir, if you'd step around here and

1 have a seat in the witness box, and pull yourself up close  
2 to the microphone, please.

3 And, Ms. Nester, you're free to proceed.

4 MS. NESTER: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY MS. NESTER:

7 Q Good afternoon.

8 A Good afternoon.

9 Q Could you please introduce yourself to Judge Warner.

10 A My name is Morgan Philpot.

11 Q And what do you do for a living?

12 A I am an attorney.

13 Q How long have you been an attorney?

14 A 2008 -- since 2008.

15 Q And which -- are you barred in more than one state?

16 A I am barred in Utah and Oregon.

17 Q And what type of law do you practice generally,  
18 Mr. Philpot?

19 A I'm a street lawyer.

20 Q What does that mean?

21 A I do a little bit of everything, and primarily, I would  
22 say, you know, being an attorney in Utah, a bit of criminal  
23 defense, divorce, civil matters. I have drafted agreements,  
24 contracts, reviewed them, given general legal advice.

25 Q Do you appear in state or federal, or both courts?

1 A Both.

2 Q What is your standing with the Utah State Bar?

3 A I'm in good standing.

4 Q What about with the State of Oregon?

5 A Same.

6 Q Have you ever had your license revoked or suspended?

7 A No.

8 Q Have you had any discipline actions pending right now  
9 against you?

10 A No.

11 Q I want to talk -- first, I want to go back in time just  
12 a little bit, and then we're going to jump up to just try to  
13 pinpoint the relevant time frames.

14 What was the -- how did you first meet Rick Koerber?

15 A I was introduced to him in 2012.

16 Q And at that time where was Rick working?

17 A I think -- I don't remember the name of the firm, but  
18 he was working downtown when I met him.

19 Q There's been an exhibit introduced into evidence, a  
20 paycheck from Corvus Law Group. Does that refresh your  
21 memory?

22 A I vaguely remember Corvus Law Group. I don't think --  
23 I could be wrong. I think of him more as Corvus  
24 Administration.

25 Q So let's talk about that, then. So the first time you

1 met Rick, was he doing business under that name, or do you  
2 know?

3 A Honestly, I don't know at that time. In 2012, I don't  
4 know.

5 Q At some point did he start helping you out with tasks,  
6 and projects, and jobs that you would hire him on?

7 A He did.

8 Q When did that start?

9 A I think at the beginning of 2013.

10 Q And you were in the courtroom when you saw Mr. Greg  
11 Petersen, the U.S. Probation officer, get on the stand and  
12 say that he had a letter from you dated probably July of  
13 2013 -- or June?

14 A That's correct, yeah.

15 Q And you wrote that letter?

16 A Yes.

17 Q And in that letter you confirmed that Mr. Koerber did  
18 work for you; is that right?

19 A That's correct.

20 Q And at that time did you pay him as a W-2 employee or  
21 was he an independent contractor for you?

22 A Independent.

23 Q And when you paid him, what was the name of the  
24 business that you paid?

25 A Corvus Administration and Management.



1 Q And can you just talk a little bit about the type of  
2 work that you believed he was available to give your firm.

3 A Legal services. If I needed something done, I trusted  
4 Rick. I would say I trusted him then and came to trust him  
5 even more to do all sorts of things.

6 Q Like what? Give me some examples.

7 A You know, research, writing, advice. We've done -- you  
8 know, I've gotten his advice on jury trials, jury selection,  
9 motion practice, delivery service of process, investigation.  
10 It's pretty comprehensive.

11 Q Okay. And when you worked with him, did he ever use --  
12 what name has he always used when he works for you?

13 A Well, I know him as Rick. He has used Rick -- I mean,  
14 I know him as Rick Koerber, but he'll typically -- I know  
15 his family goes by Franklin, and I think that's primarily  
16 because of the stigma that's been put upon him by so much  
17 bad press, and he wants his children to be somewhat  
18 protected from that. So I've known him as Rick Franklin and  
19 Rick Koerber.

20 Q Has he ever used the name Derrick Roebuck at any time  
21 with you or any of your clients, to your knowledge?

22 A When you say like use it with them, as in representing  
23 himself as Derrick Roebuck?

24 Q Correct.

25 A No.

1 Q So during the time that he worked for you, did he work  
2 for you steadily since 2013 until now, or were there gaps?

3 A Steadily.

4 Q Were you aware whether he was working for other law  
5 firms around town as well or even --

6 A I was aware.

7 Q -- out of town?

8 A Sorry. I was aware.

9 Q How were you aware of that?

10 A I knew some of the attorneys. I recommend him to other  
11 attorneys. I have worked with him in state and out of state  
12 with attorneys, and he has a very good reputation with  
13 everybody he works with.

14 Q Can you -- Judge Warner was interested in some of the  
15 firms he's worked for. Do you know any off the top of your  
16 head?

17 A Yes.

18 Q Give us some names of firms that have hired him as  
19 Corvus.

20 A You've already met Russ. I don't know how they hire  
21 him. I'm not privy to those agreements, but I know he has  
22 worked with -- and, again, I can't speak to whether or not  
23 he has employment agreements, but he has worked and advised  
24 the Federal Defender's Office in Nevada. He has worked with  
25 and advised CJA attorneys in Oregon. He has worked with

1 several law firms here in town. I think -- again, I hate to  
2 speak on his behalf, but I can name the attorneys. I'm not  
3 sure I know --

4 Q What are some of the names of attorneys? Judge Warner  
5 probably knows them.

6 A Pearson Butler I remember. I think he's given some  
7 advice to them. I can't remember these guys' names.

8 Q Any large firms in D.C., New York that you're aware of?

9 A Yeah. There's a firm he has -- there's a firm he's  
10 worked with out of California that we're working with now,  
11 Call & Jensen. There is a firm in D.C. I know he's got a  
12 good relationship with. I can't remember their name. It's  
13 one of the really big, nationwide firms. One of those elite  
14 firms, you know. Those ones.

15 Q Yeah. They don't talk to me.

16 So you are comfortable telling Judge Warner that he was  
17 doing legal work for not just you, not just Mr. Skousen, but  
18 various firms in Utah and outside of Utah providing these  
19 legal services, right?

20 A Yeah. I would probably be better at representing the  
21 who versus the names of the entities and the relationship,  
22 and the respect I know they have for him, because I've seen  
23 it firsthand.

24 Q And have you ever referred him out and had someone come  
25 back and say, man, why did you send me that guy? Are they

1 satisfied when they talk back to you?

2 A Always.

3 Q And how is your relationship in terms of reliability?

4 If you ask Rick to get something done, does he get it done?

5 A He does.

6 Q What's the time of day where Rick works the most?

7 A He's a night owl.

8 Q Okay. All right. So now I want to move forward a

9 little bit to --

10 A Can I?

11 Q Go ahead.

12 A But that doesn't do it justice, because he doesn't  
13 sleep much. So he's also a morning guy.

14 Q That end of the morning. I'm aware.

15 So I want to move forward just a little bit to a case  
16 that has occurred in the District of -- or the state court  
17 of Oregon, right?

18 A Right.

19 Q It's a case called Edwards vs. Fryberger. Of did I get  
20 them backwards?

21 A Fryberger v. Edwards.

22 Q Sorry. I knew I would do that. Fryberger v. Edwards.

23 I'm just now asking -- I'm not going to get into  
24 attorney-client privileged information, so could you just  
25 reveal, based on what's in public pleadings, the nature of

1 the case. What is the case about?

2 A It's a contract land dispute basically.

3 Q Which is the party that you represent?

4 A Edwards.

5 Q And has there been litigation in this case?

6 A Sort of. That's the problem.

7 Q Without revealing anything your client has told you,  
8 and I'm not asking for that, can you explain the history of  
9 the litigation just very briefly -- not crazy, but just very  
10 briefly.

11 A The law firm in Oregon who represents the plaintiff,  
12 and I'll just be very blunt, has been one of the most  
13 unpleasant, unprofessional law firms I've ever worked with.  
14 They have made a very serious false misrepresentation to the  
15 circuit court in Oregon on the record, which they failed to  
16 correct, which gave rise to the necessity of our appeal.

17 Q So the grounds for your appeal is this  
18 misrepresentation that's on the record?

19 A That's part of it.

20 Q And I need to get a little more detail than that to put  
21 this in context. So at some point was there a default  
22 judgment awarded?

23 A There was, yes.

24 Q Can you explain to Judge Warner -- he's done civil  
25 practice as well here in court, he'll know, but just explain

1 very briefly how that default judgment came to be.

2 A Sure. It's very clear from the record that there have  
3 been arguments over whether or not and when pleadings would  
4 be amended in Oregon. The strangely absent attorney in the  
5 government's case today, who does not make an affidavit, who  
6 made the misrepresentation to the court also, I believe  
7 deceived my firm in order to prolong the filing of amended  
8 pleadings.

9 Q And what is her name?

10 A Her name is Danielle Lordi, L-o-r-d-i.

11 Q And without getting into your personal opinions, your  
12 lawsuit -- or your appeal is claiming she misled the court  
13 in order to get the default judgment; is that right?

14 A It is obvious she misled the court. It is on the  
15 public record.

16 Q And that's what going up?

17 A That's correct.

18 Q And your client at some point made a decision to --  
19 don't reveal what they said, but made a decision to move  
20 forward appealing that default judgment on the grounds of  
21 misrepresentation; is that right?

22 A In part.

23 Q All right. And that's when these pleadings are being  
24 filed, this notice of appeal that's before Judge Warner  
25 today, right?

1 A The notice of appeal, if I understand you correctly,  
2 yes.

3 Q Prior to -- has the firm in Oregon filed anything with  
4 the state court alleging that your service of process was  
5 somehow improper?

6 A Not with the circuit court.

7 Q With the appellate court?

8 A They tried.

9 Q And what happened? What did the appellate court do  
10 with their motion?

11 A They rejected it.

12 Q Has that firm refiled that motion in any way?

13 A They have not.

14 Q Has there been any request from the firm that's active  
15 right now to set aside that service of process?

16 A No.

17 Q If that firm chose to challenge your service of  
18 process, could they do that if they learned how to do it  
19 correctly?

20 A Yes.

21 Q And then would that court be able to give them a remedy  
22 in the civil matter?

23 A Yes.

24 Q So now let's talk about the service of process because  
25 this is really important. So explain to me how Oregon law

1 is different from other states in terms of how to effect the  
2 service of process.

3 A So I imagine you want me to get at probably two  
4 different aspects, which is service of process and delivery?

5 Q Correct.

6 A So can I touch on both of them at once?

7 Q Yes.

8 A They are very liberal when it comes to both service of  
9 process and delivery, and have a very unique law when it  
10 comes to delivery of, in particular, notice of appeal.

11 Q What makes their law unique?

12 MS. NESTER: May I approach, Your Honor? I have  
13 the statute here.

14 THE COURT: You may.

15 BY MS. NESTER:

16 Q I'm handing you the Oregon statute to help refresh your  
17 memory. So what makes the Oregon statute unique about how  
18 process is served there?

19 A So, again, process and delivery are different. And  
20 specifically delivery when it comes to a notice of appeal is  
21 even more different than that. So there's kind of really,  
22 actually several distinctions, but all of them fitting in  
23 with Oregon's very liberal -- and I don't mean in a  
24 political sense, but I mean in a more legal sense -- very  
25 liberal ability to effectuate service and delivery. And I



1     couldn't tell you the language exactly, but there's case law  
2     in Oregon that goes specifically to effectuating service of  
3     process that almost says --

4     Q     Well, stay away from the case law right now.  Let's  
5     focus on what the rule says.

6     A     So that's the rule on delivery.  And this is the rule  
7     on delivering a notice of appeal.  And a notice of appeal  
8     can be delivered by dispatch.  I don't know if that's the  
9     right way to put it, but it can be dispatched and the date  
10    of dispatch is the date of filing, if I'm getting that right  
11    with the Court.  If you don't mind, let me look at it again.

12           It says regardless of the date of actual receipt by the  
13    court to which the appeal is taken --

14    Q     Slow down.

15    A     Regardless of the date of actual receipt by the court  
16    to which the appeal is taken, the date of filing the notice  
17    is the date of mailing or dispatch for delivery, and that's  
18    fairly unique.

19    Q     So, in other words, it's kind of that old-fashioned  
20    mailbox rule, almost, that we used to have before we had  
21    electronic filing.  It's when you placed it in the hands of  
22    the courier, right, when you dispatch it?

23    A     Well, dispatch --

24    Q     Or could mean when you request it to be served.

25    A     So, interestingly, Oregon doesn't do a lot of defining.

1 So dispatch is the delivery to the agent.

2 Q That's going to deliver it?

3 A That's correct.

4 Q And do they specify in the rule whether or not -- what  
5 type of deliverer you have to contract with?

6 A Do you mind if I look at it real quick? I kind of  
7 remember, but I want to get it right.

8 So the notice can be mailed or dispatched via the  
9 United States Postal Service or a commercial delivery  
10 service.

11 Q What is a commercial delivery service, to your  
12 understanding?

13 A It's a delivery service that takes money for their  
14 service. I would -- I guess -- anyway, yeah.

15 Q Is it defined anywhere by the State of Oregon what a  
16 commercial delivery service is?

17 A It is not.

18 Q Did you -- and let's just get the dates clear because  
19 this is important too. When the default judgment was filed,  
20 what was the date your notice of appeal would have been due  
21 under Oregon law?

22 A It would have been March 4th.

23 Q Why March 4th?

24 A Because the date of filing of the notice of appeal is  
25 30 days from the entry of judgment.

1 Q Okay. And what was the 30th day?

2 A The 30th physical day?

3 Q Yes.

4 A The 2nd of April.

5 Q March you mean.

6 A Sorry. The 2nd of March, yeah.

7 Q What day of the week was the 2nd day of March?

8 A Saturday.

9 Q So what happens when the filing deadline falls on a day  
10 when the courthouse is closed?

11 A It would be due the next business day.

12 Q Which was what day?

13 A March 4th.

14 Q March 4th was your deadline to dispatch the documents  
15 for service?

16 A That's correct.

17 Q Okay. Now the Court has already introduced -- or  
18 accepted the receipt made out by Corvus Administration dated  
19 March the 2nd, and you're aware of that document, right?

20 A Yes.

21 Q Let me bring it to you now.

22 MS. NESTER: May I approach, Your Honor?

23 THE COURT: You may.

24 BY MS. NESTER:

25 Q So you have in front of you what's already been

1 introduced by the government in this case. Do you recognize  
2 that receipt?

3 A I do.

4 Q Who issued the receipt?

5 A Corvus Administration.

6 Q And what is the date on the receipt?

7 A March 2nd, 2019.

8 Q So the dispatch date for purposes of Oregon law would  
9 have been what date?

10 A March 2nd, 2019.

11 Q And that preceded even by two days your deadline?

12 A That's correct.

13 Q All right. Then is there any requirement that it must  
14 be delivered within a certain number of days?

15 A No.

16 Q Okay. Is there a reference to three days in the rule?

17 A There is.

18 Q What is that reference?

19 A In my opinion, you have to have a good faith basis that  
20 it's going to be calculated to be delivered within three  
21 days.

22 Q That's what it says in the rule, right?

23 A Yes.

24 Q Okay. So talk to me about how you dispatched this  
25 notice of appeal filing to Corvus Administration for

1 delivery.

2 A I told Rick to get it done.

3 Q And did he charge you for that?

4 A He did.

5 Q And are the dollar amounts that are reflected on that  
6 receipt the correct dollar amounts?

7 A They are.

8 Q And do you have a personal recollection that you asked  
9 him to do it over the weekend, or that Friday, or that  
10 Monday? Do you remember when you asked him specifically to  
11 do it?

12 A As soon as humanly possible.

13 Q No. No. Not deliver it. When did you ask him, when  
14 did you first ask him?

15 A Well, I know we had discussed it prior to this. But  
16 this was -- I'm not sure I understand you. This was the  
17 date of dispatch, so this would be the day I asked him to do  
18 it.

19 Q March 2nd?

20 A That's correct.

21 Q Okay. Did you give him any restriction as to  
22 specifically how it was to be delivered or a request as to  
23 how it was to be delivered?

24 A By hand.

25 Q And did you follow up with him to determine whether it

1 was being served?

2 A I did.

3 Q What did you learn about how it was served?

4 A Well, it was served by Maureen Peltier.

5 Q Who is Maureen Peltier?

6 A A woman and acquaintance who lives in Oregon.

7 Q And to your understanding, did Maureen Peltier give you  
8 a declaration of her service of these documents?

9 A She did.

10 Q And was there anyone that accompanied her to service of  
11 these documents?

12 A Her husband.

13 Q And what does her husband look like?

14 A He is maybe five -- I'm not real good with height.  
15 Five ten-ish, and kind of a portly dude with a grayish,  
16 brownish beard and grayish, whitish long hair.

17 Q How long is his hair?

18 A I think probably roughly here. (Indicating shoulders)

19 MS. NESTER: May I approach, Your Honor?

20 THE COURT: You may.

21 BY MS. NESTER:

22 Q What is this document I'm handing you?

23 A This is the declaration of Maureen Peltier.

24 Q When did you obtain that from her?

25 A I obtained this from her on May 30th, 2019.

1 Q And is that a true and accurate description of the  
2 declaration that she -- is that her signature at the bottom?

3 A That is.

4 Q And did you speak to her before that declaration?

5 A I did.

6 Q And how was the declaration prepared?

7 A I prepared it.

8 Q Based on what?

9 A Based upon my conversation with her and my  
10 understanding of the events.

11 Q Did you give her the opportunity to correct it or amend  
12 it?

13 A I did.

14 Q Did she make any corrections or amendments?

15 A I don't think so. She said it was absolutely correct.

16 Q All right.

17 MS. NESTER: Your Honor, at this point I would  
18 like to move into evidence the declaration of Maureen  
19 Peltier.

20 THE COURT: Objection?

21 MR. CLARK: No, Your Honor.

22 THE COURT: It will be received.

23 MS. NESTER: Defense Exhibit 8.

24 (Defendant's Exhibit 8 was received into  
25 evidence.)

1 THE COURT: Would you hand that up, please.

2 MS. NESTER: Yes, sir.

3 BY MS. NESTER:

4 Q So Ms. Peltier lives where?

5 A In Oregon.

6 Q With her husband, right?

7 A Yes.

8 Q And according to her statement, she was retained by  
9 Corvus Administration to hand deliver the documents; is that  
10 right?

11 A That's right.

12 Q The receipt that you have in front of you, there's the  
13 initials MP. Are those your initials?

14 A They are not.

15 Q Whose initials are those?

16 A Those would be Maureen Peltier's.

17 Q And what is your understanding, based on her  
18 declaration, of when she affixed her initials to that  
19 document?

20 A I believe it was the 8th of March.

21 Q When she did what?

22 A Delivered.

23 Q And that document is attached to an affidavit from a  
24 legal assistant up in the law firm in Oregon, is that right,  
25 and that's what she received?



1           It may not be in the version I gave you. Sorry.

2   A     I see a declaration of Kristi L. Tubbin. This is  
3   attached to Kristi L. Tubbin's. Is that the one you want me  
4   to look at?

5   Q     Yes.

6   A     And what was the question?

7   Q     And she's stating in her document that that was what  
8   she was handed?

9   A     That's correct.

10   Q    Do you have personal knowledge -- were you in  
11   communication with Maureen during the time that you are  
12   anxiously awaiting for the documents to be delivered?

13   A     Yes.

14   Q     In what way did you communicate with her?

15   A     Phone calls by voice and text.

16   Q     And you personally talked about it with her, or her  
17   husband, or both?

18   A     Both.

19   Q     And what was the nature of your communication with  
20   them?

21   A     You're getting this done, right.

22   Q     And do you still have those texts?

23   A     I do.

24   Q     And did you review them before testifying today?

25   A     I did.

1 Q And is it consistent with your testimony?

2 A Yes.

3 Q Right now has there been any move to set aside your  
4 appeal as being improper in any court other than this one?

5 A Well, the motion you mentioned earlier that the court  
6 rejected.

7 Q Right. So right now your appeal still stands?

8 A Yes.

9 Q So if the opposing counsel has a good faith dispute  
10 with you about whether Corvus Administration fits the  
11 definition of a commercial delivery service, what would be  
12 the avenue they could deal with that in Oregon?

13 A They could file something with the court of appeals in  
14 Oregon.

15 Q Okay. And they haven't --

16 A Well, actually, sorry. Can I correct that? They have  
17 a duty to meet and confer. But as is typical of them, they  
18 do not do that.

19 Q And that's a pattern with them?

20 A Yes, and that is why the court rejected their document.

21 MS. NESTER: One moment, Your Honor.

22 BY MS. NESTER:

23 Q Has anyone from U.S. Probation called you to interview  
24 you about how this happened and what this was all about?

25 A Not at all.

1 Q Has anyone from the law firm, other than their motion,  
2 which was your first notice, called you and said, hey,  
3 what's up, who delivered this?

4 A No.

5 Q How much money do the lawyers that file these  
6 affidavits stand to gain if your service of process is set  
7 aside?

8 A I don't know what their agreement is, but there are  
9 millions of dollars at stake, and a family ranch, a very  
10 valuable family ranch in eastern Oregon.

11 Q And it would end the allegation that they made a  
12 misrepresentation to a court --

13 A That's correct.

14 Q -- on the record? That would go away too?

15 A Yes. Well, sorry. That's not necessarily true.  
16 Oregon allows for me to challenge in the circuit court as  
17 well as the appellate court, which I intend to do.

18 Q Did Rick Koerber ever make any representation to you  
19 about the service of this process that ever turned out to be  
20 untrue?

21 A No.

22 Q Did Rick Koerber make any representations at all to the  
23 court in Oregon?

24 A No.

25 Q Who sent the receipt and the notice to the court?

1 A That is -- I'm the one who attests to the court  
2 relative to service of process.

3 Q Is there anything on that receipt that's in front of  
4 you that is not true, that was filed with the court?

5 A No.

6 Q If you had some nefarious intent, which date would it  
7 have made more sense to you to lie about that you dispatched  
8 it? Which date would have given you the most possible time  
9 to serve it?

10 Do you understand what I'm asking you?

11 A I think so. Can I look at the rule again and just  
12 think about this for a sec?

13 Q Yeah.

14 So let me ask it this way so it's not so opaque.

15 A Sure.

16 Q If you had stated on the receipt that you dispatched it  
17 on the 4th, that still would have met your deadline under  
18 the law, right?

19 A That's correct.

20 Q And that would have given you extra time to serve it,  
21 right?

22 A That's correct.

23 Q So the best position you could have been in if you were  
24 going to fake the date or backdate it, as Mr. Clark  
25 suggested, would be to put it on the 4th?

1 A That's correct.

2 Q And instead you put the date you actually dispatched  
3 it, which is the 2nd?

4 A That's correct.

5 MS. NESTER: Just a moment, with the Court's  
6 indulgence, please.

7 That's all I have, Your Honor.

8 THE COURT: Thank you.

9 Cross-examination, Mr. Clark.

10 MR. CLARK: Yes, Your Honor. Thank you.

11 CROSS-EXAMINATION

12 BY MR. CLARK:

13 Q Good afternoon, Mr. Philpot.

14 A Good afternoon.

15 Q You described the other law firm as unpleasant and  
16 unprofessional. I think that's what you used, right, as the  
17 term?

18 A Yes.

19 Q Has anyone ever described your law practice that way?

20 MS. NESTER: Objection, Your Honor.

21 THE COURT: Overruled. The rules of evidence are  
22 relaxed in this.

23 THE WITNESS: I would imagine somebody somewhere  
24 has.

25 //

1 BY MR. CLARK:

2 Q But never to your face I guess is what you're saying?

3 A I'll think about that. I think I've probably had my  
4 wife tell me that a time or two.

5 Q Oh, okay.

6 You mentioned that millions of dollars were at stake  
7 here?

8 A Yes.

9 Q And a family ranch as well?

10 A Yes.

11 Q What would have happened if the notice of appeal was  
12 untimely?

13 A That would be up to the -- we'd probably just ask for  
14 an extension of time.

15 Q So you weren't at risk of losing \$4 million -- or  
16 millions of dollars in a family ranch if the notice of  
17 appeal was untimely?

18 A I imagine if it ultimately is found untimely, my client  
19 will probably seek redress with the court of appeals, the  
20 Supreme Court of Oregon, and the Circuit Court of Harney  
21 County.

22 Q And that would have been probably against you and your  
23 firm, then?

24 A I'm not sure what would be.

25 Q If your client asked you to file a notice of appeal and

1 you were untimely and the court rejected your notice of  
2 appeal, they'd come after you, right?

3 A They probably could, yeah.

4 Q You mentioned that you put together this declaration  
5 for Maureen Peltier?

6 A That's correct.

7 Q Do you have that in front of you?

8 A I do not.

9 Q Okay.

10 THE COURT: I have the Court's copy. I'll let you  
11 use that.

12 THE WITNESS: Thank you, Your Honor.

13 THE COURT: It's the exhibit actually. It's not  
14 the Court's copy. It is the exhibit.

15 BY MR. CLARK:

16 Q Mr. Philpot, who is Maureen Peltier?

17 A Like objectively, subjectively?

18 Q Why are you employing her or why is Corvus employing  
19 her to deliver a notice of appeal in Oregon?

20 A To get it done, I guess.

21 Q Why are you choosing her?

22 A She was available.

23 Q How do you know her?

24 A I met her when I was in Oregon for a trial.

25 Q Okay. Any more details than that, or you just met her

1 in Oregon? How do you know her, Mr. Philpot?

2 A I met her -- I don't know what -- tell me what you're  
3 getting at and I'll tell you. I met her in Oregon.

4 Q In what capacity did you meet her?

5 A I don't know. It'd just help if we'd cut to the chase.  
6 I mean, as a person I guess. I don't know what you mean.  
7 Like outside the courthouse, inside the courthouse, as a  
8 nice person?

9 THE COURT: Mr. Philpot, I think you know what  
10 he's asking. It's a relatively straightforward question.  
11 What's the nature of the relationship? How did you meet  
12 her? Is she employed in a business? Is she working for  
13 somebody? Please just answer the question.

14 THE WITNESS: Sorry. I honestly didn't understand  
15 that. I met her at the Ammon Bundy trial in Oregon. She  
16 was a frequent attendee, a very nice person, came up said  
17 hi, introduced herself, and just -- that's about it, I  
18 guess.

19 BY MR. CLARK:

20 Q What was she doing there?

21 A I guess you'd say she was a supporter of Ammon Bundy.

22 Q What does she do for a living?

23 A I don't know.

24 Q Really. You mentioned you drafted this, and it's  
25 not -- maybe you can help me understand. What day did



1 Ms. Peltier receive this hand delivered notice of appeal?

2 A I believe it was March 8th.

3 Q You're looking there at paragraph six -- or sentence  
4 six, whatever you'd call it?

5 A Yes.

6 Q So she received it March 8th?

7 A I believe so, yeah.

8 Q As you note here -- or she notes that she received and  
9 completed the delivery, and that's March 8th, 2019?

10 A Correct.

11 Q So under your calculation, that would be four days  
12 after -- four days after the notice of appeal deadline?

13 A Yes.

14 Q And six days after you had dispatched it with Corvus?

15 A That's correct.

16 Q Do you have the exhibits up there in front of you,  
17 Mr. Philpot?

18 A I do.

19 Q Do you have the receipt that was page 13 of  
20 Government's Exhibit 1?

21 A I do.

22 Q And, again, there's the initials MP here next to your  
23 name, right?

24 A That's correct.

25 Q But you're saying that's not you?

1 A That's correct. I believe -- do you want me to  
2 explain?

3 Q Sure.

4 A I believe that's Maureen's indication that she  
5 delivered.

6 Q Okay. And you chose Maureen, or Corvus chose Maureen  
7 just because you happened to know her and meet her during  
8 the Bundy trial in Oregon?

9 A Yeah, I guess, and we trusted her to do it, I think.

10 MR. CLARK: One moment, Your Honor.

11 No further questions.

12 MS. NESTER: Can I follow up, Your Honor, just  
13 very briefly?

14 THE COURT: Yeah.

15 MS. NESTER: Thank you. Just very briefly.

16 REDIRECT EXAMINATION

17 BY MS. NESTER:

18 Q Was there attempts to find other people locally in  
19 between when Ms. Peltier got the documents and -- do you  
20 know whether there was an attempt to find someone else and  
21 it fell through?

22 A I think Corvus -- you know, Rick tried to.

23 Q So that explains why it was delayed a little bit?

24 A Yeah -- well, yeah.

25 Q Do you know who he tried to reach out to that ended up

1 not doing it?

2 A I don't, but I bet if you refresh my memory, I would  
3 remember. I mean the names are probably familiar to me.

4 MS. NESTER: That's all I need. Thank you,  
5 Your Honor.

6 THE COURT: I've got a few questions of my own,  
7 Mr. Philpot.

8 THE WITNESS: Sure.

9 THE COURT: You indicated, sir, that you've been  
10 practicing since 2008, and you've worked with Mr. Koerber a  
11 number of times. You've referred him to other attorneys. I  
12 can't recall. Would you tell us who you referred him to.

13 THE WITNESS: I think I can give you names.

14 THE COURT: Please.

15 THE WITNESS: And I would say more than referring,  
16 vouching for him.

17 If I go back, I've had many conversations with  
18 Russ Skousen. We both, I think, have similar, mutual  
19 feelings about him. I have not only worked with him in  
20 conjunction with other attorneys, but we've helped represent  
21 attorneys like Dan Whiting from -- I always want to call  
22 them Carson Butler, but that's the owner's name. It's  
23 Pearson Butler.

24 I have vouched for him and he has worked with Matt  
25 Schindler, Bob Salisbury in Oregon. He has worked with the

1 Federal Defender's Office in Oregon. I have vouched for him  
2 and worked with him with Call & Jensen, as I mentioned, in  
3 California.

4 THE COURT: Any local attorneys, Mr. Philpot?

5 THE WITNESS: I'm a little bit protective of him  
6 here because I don't want to lose his services for me.

7 THE COURT: You're under oath and I'm asking you a  
8 question.

9 THE WITNESS: No. I don't mean in that way,  
10 Your Honor. I don't mean protective in that way. I mean,  
11 anybody else he goes to work for is less time he gets to  
12 work for me.

13 So locally, Pearson Butler. I have recommended  
14 him to an old law school buddy of mine, Austin Hepworth. I  
15 think pretty much everybody I ever have pleasant  
16 associations with, I recommend him and vouch for him,  
17 Your Honor.

18 THE COURT: Okay. Now Corvus was not primarily in  
19 the business of commercial delivery services, were they?

20 THE WITNESS: If I were to cite an objection, I'd  
21 say that's irrelevant. They do that service absolutely, and  
22 they did it for me.

23 THE COURT: You're saying my question is  
24 irrelevant?

25 THE WITNESS: Well, sort of, because the Oregon

1 law --

2 THE COURT: I think, Mr. Philpot, you have the  
3 roles reversed.

4 THE WITNESS: I know, Your Honor.

5 THE COURT: My questions are always relevant.

6 THE WITNESS: I'm sorry, Your Honor. It's just  
7 I'm thinking of the Oregon law and it doesn't require that,  
8 but yes, he's not --

9 THE COURT: I'm not saying what the Oregon law  
10 requires. I'm asking you from your experience with Corvus.

11 THE WITNESS: They're not primarily in the  
12 business of commercial delivery.

13 THE COURT: That's what I thought.

14 THE WITNESS: I think.

15 THE COURT: Okay. And as an example, Mr. Philpot,  
16 you're familiar with FedEx, and DHL, and UPS, and other  
17 commercial delivery services, correct?

18 THE WITNESS: Yes, Your Honor.

19 THE COURT: How much did you pay Corvus to  
20 deliver? Over \$200, correct?

21 THE WITNESS: Yes, Your Honor.

22 THE COURT: How much would FedEx charge to send a  
23 package to the court up in Oregon? Do you have any idea?

24 THE WITNESS: I could probably guess, Your Honor,  
25 that it would end up being, if I wanted certified hand

1 delivery, you know -- what do they call that, return receipt  
2 requested -- that I'm probably looking at 45 bucks,  
3 somewhere in there.

4 THE COURT: Maybe at the outside.

5 So, Mr. Philpot, you had available to you any  
6 number of commercial delivery services, correct?

7 THE WITNESS: No.

8 THE COURT: You didn't? You don't have DHL? You  
9 don't have UPS? You don't have FedEx available to you?

10 THE WITNESS: To accomplish what I want,  
11 Your Honor. I did not want that.

12 THE COURT: You didn't want FedEx, as an example?

13 THE WITNESS: No.

14 THE COURT: What was wrong with FedEx delivering  
15 notice of appeal papers?

16 THE WITNESS: Because I was on March 2nd with  
17 potentially having to live with a deadline that was either  
18 March 2nd, March 4th, March 7th, March 8th, depending on how  
19 the Utah Court of Appeals would interpret the calculated to,  
20 and I wanted it hand delivered by somebody I knew and  
21 trusted.

22 THE COURT: Okay. So even though FedEx has a  
23 worldwide organization and reputation, you didn't trust  
24 FedEx, correct?

25 THE WITNESS: I guess not.

1 THE COURT: But you trusted Corvus, including a  
2 woman, to deliver this documents -- or these documents, that  
3 you had met in Oregon during the trial, really didn't know  
4 what her business was, didn't know what she does, but you  
5 trusted her, but not FedEx; is that correct?

6 THE WITNESS: Yes.

7 THE COURT: Okay. That's what I wanted to know.

8 And you were willing to pay three, four, five  
9 times as much for the delivery by this woman, Ms. Peltier,  
10 rather than go through a commercial operation such as FedEx?

11 THE WITNESS: Yes.

12 THE COURT: And do you know why Mr. Koerber sent  
13 these appeal documents to Ms. Peltier as his agent in  
14 Oregon?

15 THE WITNESS: To get them delivered.

16 THE COURT: No. I mean why her as opposed to  
17 anyone else.

18 THE WITNESS: Because I recommended he use her.

19 THE COURT: Okay. You didn't just send them  
20 yourself?

21 THE WITNESS: No.

22 THE COURT: You paid him 200 plus dollars to send  
23 them?

24 THE WITNESS: Yes.

25 THE COURT: Okay.

1 THE WITNESS: Can I elaborate, Your Honor?

2 THE COURT: Sure.

3 THE WITNESS: Some of my specific communications  
4 that day to Ms. Peltier was that the documents would be  
5 coming from Corvus Administration.

6 THE COURT: How much was she paid to deliver, do  
7 you know?

8 THE WITNESS: \$300, Your Honor.

9 THE COURT: She was paid \$300?

10 THE WITNESS: Yes, Your Honor.

11 THE COURT: Who paid that?

12 THE WITNESS: I had to pay that, Your Honor.

13 THE COURT: So you paid, if I'm understanding this  
14 correctly, Mr. Koerber 209 -- was it \$209?

15 THE WITNESS: Yes, Your Honor.

16 THE COURT: And then you paid an additional \$300  
17 to Ms. Peltier?

18 THE WITNESS: Yes, Your Honor.

19 THE COURT: So you paid over \$500 for this service  
20 that FedEx could have done for you for under 50 bucks,  
21 correct?

22 THE WITNESS: I disagree with that  
23 characterization, but that is correct.

24 THE COURT: Thank you. I have no further  
25 questions.



1 Follow-up, Ms. Nester?

2 FURTHER REDIRECT EXAMINATION

3 BY MS. NESTER:

4 Q If Judge Warner asked you if you -- why didn't you just  
5 hire her yourself, would that have complied with the Oregon  
6 rule?

7 A If I had hired Maureen?

8 Q Yeah.

9 A As my dispatch?

10 Q Yeah.

11 A Yeah.

12 Q Okay. And also has FedEx ever messed up a delivery for  
13 you in the past?

14 A I don't use FedEx. I think I have used it for -- I've  
15 just -- I don't regularly use it, especially in the day of  
16 electronic filing and a notice of -- well, anyway. You  
17 probably don't want me to elaborate.

18 Q It doesn't matter.

19 If there was a contesting of whether something was  
20 properly filed, would it be more prudent to have someone you  
21 could call to testify about the physical delivery of the  
22 documents rather than just a delivery person?

23 A My opinion, yes.

24 MS. NESTER: That's all I have. Thanks,  
25 Your Honor.

1 THE COURT: Thank you.

2 Any redirect -- or, excuse me, recross, Mr. Clark?

3 RECROSS-EXAMINATION

4 BY MR. CLARK:

5 Q Mr. Philpot, how did Ms. Peltier get the documents  
6 herself?

7 A She received them from Corvus.

8 Q How?

9 A I believe she went to a local print shop where Corvus  
10 sent them to her and they were printed out so she could  
11 deliver them.

12 Q And Corvus gave them to her, then, on March 8th for her  
13 to print out?

14 A I believe so.

15 Q So four days after the deadline?

16 A That's correct.

17 Q And six days after you say you dispatched it to Corvus?

18 A That's correct.

19 MR. CLARK: Thank you, Your Honor.

20 THE COURT: Thank you.

21 Anything else, Ms. Nester?

22 MS. NESTER: Not with this witness, Your Honor.

23 THE COURT: Thank you, Mr. Philpot. If I could  
24 have that exhibit back.

25 Thank you for your testimony. You're excused and

1 you may step down.

2 MS. NESTER: May I grab my paperwork?

3 THE COURT: Sure.

4 Ms. Nester, you may call your next witness.

5 MS. NESTER: May I have just five minutes to talk  
6 to my client? I think we might be done, but I just want to  
7 make sure.

8 THE COURT: Sure. Let's take a short five-minute  
9 recess. I do mean five minutes. You're free to get up and  
10 mill about, but we'll reconvene in five minutes.

11 Court's in recess.

12 (Recess)

13 THE COURT: Court will come to order.

14 We're back in session in the case of U.S. vs.  
15 Koerber.

16 And, Ms. Nester, are you prepared to call your  
17 next witness?

18 MS. NESTER: Your Honor, first I would like to --  
19 I think it might be helpful to the Court if I could tender  
20 as Defense Exhibit No. 9 the Oregon statute about delivery.  
21 I think it might be helpful to you. It's just an e-mail  
22 that I cut and pasted it out of Oregon, but I represent to  
23 you this is the statute.

24 MR. CLARK: No objection, Your Honor.

25 THE COURT: Then it will be received, and please

1 bring it up to the bench.

2 Thank you.

3 (Defendant's Exhibit 9 was received into  
4 evidence.)

5 MS. NESTER: Your Honor, at this time we do not  
6 have any more documentary or witness testimony. We  
7 certainly do want an opportunity -- if the Court needs to  
8 hear more from us, we're prepared to do that, but we are  
9 done with the evidentiary part of our presentation.

10 THE COURT: Okay. Thank you.

11 Then let me ask the government, do you have any  
12 rebuttal?

13 MR. CLARK: No, Your Honor.

14 THE COURT: Okay. Are both sides ready to argue  
15 the violation issue?

16 MR. CLARK: Yes.

17 THE COURT: Ms. Nester?

18 MS. NESTER: Yes, sir. I'm sorry.

19 THE COURT: And will it be you or will it be  
20 Ms. Oberg?

21 MS. NESTER: It will be me.

22 THE COURT: Okay. Let's go ahead and hear  
23 argument. We'll hear -- I believe, Mr. Clark, you were  
24 going to do the argument; is that correct?

25 MR. CLARK: Yes.

1           Your Honor, we submitted a filing a few days ago  
2     to try to preview for the Court what essentially our  
3     position was, but it's essentially this.

4           THE COURT: I did review that, by the way.

5           MR. CLARK: So that will save us some time. But  
6     it's essentially this, Your Honor, that Mr. Koerber lied  
7     either when he filled out the business registration for  
8     Corvus on March 6th, 2019, or when he filled out -- when he  
9     initialed the notice of appeal on March 2nd, 2019. Both of  
10    those things cannot be true, and either way, one of those  
11    lies has violated Utah statutes.

12           We have heard a lot of testimony today that really  
13    is peripheral. It doesn't really matter whether they  
14    qualify for commercial delivery services, at least in the  
15    United States' mind. It's that Mr. Koerber lied in one of  
16    those two ways and he violated the statutes by doing that.

17           THE COURT: Is that it?

18           MR. CLARK: I think so, Your Honor.

19           THE COURT: I like a man who gets to the point.  
20    Thank you, Mr. Clark.

21           Ms. Nester, please.

22           MS. NESTER: Thank you, Your Honor.

23           Your Honor, right now I'm just going to follow the  
24    Court's instruction and only apply it to the violation and  
25    preserve argument for later, if there needs to be a later.

1 THE COURT: I appreciate that. We're bifurcating,  
2 so I just want to hear on the violation.

3 MS. NESTER: I understand.

4 Your Honor, apparently -- first of all, the  
5 affidavits that were submitted contain statements that are  
6 just flat-out not true. Mr. Koerber did not serve process  
7 in Oregon, which is what they indicated in their affidavits.  
8 The fact that Corvus --

9 THE COURT: They didn't identify him.

10 MS. NESTER: Correct.

11 THE COURT: They described an individual, a  
12 gentleman who served them.

13 MS. NESTER: You know what, Your Honor, they put  
14 that allegation in their motion that they filed with the  
15 Court. I don't believe that's in front of you right now,  
16 and I apologize. I'll strike that. But they did make that  
17 allegation.

18 THE COURT: Okay.

19 MS. NESTER: The question here is was there an  
20 attempt to commit a fraud on the Court, is there a lie  
21 somewhere, is there something that committed a crime. And  
22 in this particular case, Your Honor, there has been no  
23 evidence that Mr. Koerber submitted anything untrue in his  
24 receipt. Morgan Philpot is the lawyer that signed the  
25 affidavit that said that was a true and accurate receipt.

1 You have a declaration from the woman who confirmed that it  
2 was served in the way that it was served.

3 As Your Honor knows, if you're going to establish  
4 a fraud, you have to have an intent to misrepresent and know  
5 that people are going to detrimentally rely on a falsity.  
6 There has been no evidence of a falsity.

7 The only argument that they seem to be making now  
8 is that the registration where they list the date of their  
9 new registration is somehow a lie, and it's not. It's the  
10 day that the registration begins, and it's the only date  
11 they're able to enter on the form. They admitted on the  
12 form they had been previously registered. They used the  
13 same EIN number. The Department of Commerce has all their  
14 records. There is nothing that prohibits Corvus  
15 Administration from doing business without having their  
16 registration up to date. It's just on them if they get  
17 sued. That's it. There's nothing that prevents that.

18 THE COURT: That's according to Mr. Skousen.

19 MS. NESTER: That's according to the law,  
20 Your Honor. I mean, there's a lot of businesses that do  
21 business that have expired corporate records. It's a common  
22 thing in the business world. It's not a crime. It's to his  
23 own detriment, because if he did something while he was  
24 acting as Corvus, they can sue him and they can pierce the  
25 veil, as you remember, and go after his personal assets, of

1     which he has none.

2             But I think in order for them to take away this  
3     man's liberty and say that he's committed a crime, they have  
4     to have evidence of the crime. You had a probation officer  
5     tell you that her sole reason for filing the revocation are  
6     these affidavits from the law firm in Oregon, that stand to  
7     gain, losing allegations of a dishonesty on a record, and  
8     about \$4 million, and that's it. They are not here. They  
9     cannot be cross-examined. The government has -- I have not  
10    seen any evidence that they've introduced other than the  
11    corporate records, which have no falsities on it.

12            The use of the name is permissible. You can use  
13    other names. You can make up names. You can be whoever you  
14    want to be on a corporate record as long as you are  
15    registered. He openly did business in this community and in  
16    multiple other states as Corvus. His picture is on his  
17    e-mails. He's using his legally defined name. He does not  
18    ever represent himself to be Derrick Roebuck, ever.

19            And, Your Honor, we're talking about a man that's  
20    been on pretrial -- well, I'll get into that in the next  
21    section. But as far as proof of a falsity, there is not  
22    proof of a falsity. If that firm wants to argue that Corvus  
23    doesn't meet the definition of a commercial delivery  
24    service, great, file a motion and let a judge in Oregon  
25    decide if it meets a commercial delivery service.



1           Interestingly, Mr. Koerber never represented on  
2 any document that he's a commercial delivery service,  
3 nowhere. It doesn't say that on the receipt. It just has  
4 his business name, which is true. His business address.  
5 How much he was paid. What he was hired to do, and that's  
6 true.

7           So, Your Honor, I mean to try to take away this  
8 man's liberty for doing a job he was hired to do, directed  
9 to do by a lawyer who's barred in Oregon, there's simply not  
10 a case to do that here. And I'm happy to answer any  
11 questions you have.

12           THE COURT: I appreciate that, Ms. Nester.

13           MS. NESTER: Thank you.

14           THE COURT: Thank you.

15           Anything else from you?

16           MR. CLARK: Briefly, Your Honor.

17           The documents that he filed when they reregistered  
18 Corvus said that he would not start doing business until  
19 March 6, 2019. By the very notice of appeal that they  
20 filed, he was doing business on March 2nd, 2019 as Corvus.  
21 That document was signed under penalty of perjury,  
22 Your Honor. So there is evidence of a crime that violates  
23 the statute here in Utah.

24           Mr. Koerber has been convicted of 15 counts of  
25 fraud and money laundering. He is someone who has to be on

1 his best behavior, and he wasn't. He signed something  
2 falsely under penalty of perjury. So if nothing else, even  
3 if we were to accept Mr. Philpot's testimony and  
4 Mr. Belcher's testimony as completely true, which strained  
5 credibility in many aspects, he's still violated the  
6 statutes in Utah, Your Honor.

7 THE COURT: Thank you.

8 It's the finding of the Court, Mr. Koerber, that I  
9 believe they have met their burden of probable cause.  
10 That's not a high standard, as you all are aware. And  
11 that's the standard of the statute is probable cause.

12 There's conflicting evidence here, there's no  
13 question about that, but I have to give great weight to the  
14 documents themselves. I listened carefully to the testimony  
15 and, with all due respect, the testimony was, at best,  
16 inconsistent at times. And I won't comment further on that  
17 credibility other than to say that I found the documents, as  
18 described by the government, to be sufficient to meet the  
19 burden.

20 The timing is just not in Mr. Koerber's favor.  
21 Just a couple of observations here. First of all,  
22 Mr. Skousen testified that Mr. Koerber has a pattern of  
23 doing things at the last minute. We have a situation where  
24 an appeal is due involving a \$4 million judgment. If the  
25 appeal is not filed timely, there's a good chance that that

1     \$4 million judgment is not going to be able to be contested  
2     and so forth.

3             Quite frankly, I have to be honest, I found the  
4     testimony peculiar by Mr. Philpot, that he chose to use  
5     Corvus at a time where time was of the essence. And  
6     Mr. Koerber, acting on behalf of Corvus, receives these  
7     documents on the 2nd of March, according to the dispatch.  
8     Ms. Peltier gets them on the 8th. But apparently, according  
9     to the testimony, he merely e-mailed them, and they were  
10    printed off on the 8th, with the filing deadline being the  
11    4th. It's peculiar in the timing and the methodology, to  
12    say the least. I find that explanation strained. We're  
13    paying over \$200 for Mr. Koerber to e-mail documents to  
14    Oregon that Mr. Philpot could have just as easily e-mailed  
15    to Ms. Peltier, who, coincidentally, has the same initials  
16    as Mr. Philpot. Just coincidentally.

17            So I have to tell you that while it's certainly  
18    not in my opinion a high standard to meet, I do believe that  
19    the government has met the burden of proving, by probable  
20    cause, that a violation has occurred. And, accordingly,  
21    we're going to move to the second portion of this hearing,  
22    which is whether or not Mr. Koerber's release be revoked,  
23    and that will be pursuant to the statute and rule that I've  
24    referred to earlier, 3143, and Rule 46(c). And in this case  
25    the burden is now on Mr. Koerber, according to the rules.

1           So we'll call on Ms. Nester to go forward on that.  
2   And, of course, Ms. Nester, you understand what it is the  
3   Court's looking at here, or looking for, and that is by  
4   clear and convincing evidence that Mr. Koerber is not  
5   likely, I believe is the language of the statute, is not  
6   likely to be a danger to the community.

7           Now in the government papers, and I'm sure you  
8   received copies of them, danger to the community is not  
9   necessarily just physical danger as in a violent crime,  
10   because I don't think there's any suggestion that  
11   Mr. Koerber is a physically violent person. But they cite  
12   cases to the effect that fraud, or other kinds of pecuniary,  
13   financial dangers are also able to be considered as danger  
14   to the community. So that's what I want to hear about.

15           I don't think at this point I'm overly concerned  
16   that Mr. Koerber is going to flee, or not appear. So I  
17   don't think we need to spend a lot of time on that issue,  
18   unless the government has some reason to believe that we  
19   need to discuss that. I'm just trying to narrow our focus.

20           So I'd like to hear the evidence that goes  
21   specifically to what I've addressed, and then anything else,  
22   of course, I'm more than willing to hear, but I think that's  
23   what's most relevant for the Court.

24           MS. NESTER: Yes, sir.

25           Well, I think --

1 THE COURT: I'm sorry. I guess I should have  
2 indicated by way of process, you're welcome to call  
3 witnesses or just make argument, whatever you'd like to do.  
4 Are you just going to make an argument here?

5 MS. NESTER: Yes.

6 THE COURT: Okay. And then let me just find out  
7 before you begin -- I'm sorry for interrupting -- does the  
8 government intend to call any witnesses on the second issue  
9 or is it just argument?

10 MR. CLARK: Just argument, Your Honor.

11 THE COURT: Okay.

12 I'm sorry. Go ahead, Ms. Nester.

13 MS. NESTER: So, Your Honor, from what I'm hearing  
14 from the bench, the main issue that you're interested in is  
15 whether or not his continued release would be a danger to  
16 the community.

17 THE COURT: In this case, very candidly, a  
18 financial danger, fraud, for want of a better word, that  
19 kind of danger. I don't see Mr. Koerber as a violent man.

20 MS. NESTER: And I thank you for that.

21 So I think -- I have to say I've been practicing  
22 law now for about 28 years -- 27 and a half, and I don't  
23 think I've ever had a revocation on facts like this. So  
24 it's plowing new ground a little bit.

25 I think that the Court is -- I mean, we have a

1   barred lawyer that has stood up and said this is what we did  
2   and if we did it wrong, we'll take the consequences in the  
3   court in Oregon, but has agreed that he hired Mr. Koerber to  
4   do a job. I think it's reasonable for a nonlawyer to have  
5   trust in a lawyer and say that this is a job that I'm going  
6   to do, this is a job I'm going to do.

7           I think that there are conditions this Court could  
8   place on Mr. Koerber if you are concerned about his service  
9   of process in the future, or dispatching documents. I mean,  
10   the Court is -- you know, taking away someone's liberty for  
11   something of this nature is very, very serious. And I know  
12   Your Honor understands that.

13           This case is a super complex case that's been  
14   going on for a decade. If Mr. Koerber is placed behind bars  
15   in the last few months before prepping for his sentencing  
16   hearing, it's going to significantly impact his ability to  
17   put together a good defense, to assist his lawyers. He  
18   alone has the knowledge of almost all of the documents we  
19   need for sentencing. It would probably significantly delay  
20   our ability to put documents together for this Court.

21           I do think that, you know, we've tried our best to  
22   put forth our understanding of what happened in this  
23   situation. You know, we brought our witnesses forward.  
24   It's certainly Your Honor's decision to determine what you  
25   find credible and what you don't, but we've really acted in

1 good faith here.

2 Mr. Koerber is the sole provider for a family. He  
3 was working to try to just put food on the table. They live  
4 in a trailer in Grouse Creek, Utah.

5 Your Honor, we have the testimony of the Tibbs  
6 case where Mr. Koerber testified before you back in 2015,  
7 and testified about his work in Corvus. He's never hidden  
8 it, even from you. He testified about it in front of  
9 Your Honor, and I have that testimony here today. I think  
10 you remember it, probably. It's been a long time. But he's  
11 not out there taking money from clients. He's not out there  
12 doing anything of that nature.

13 And I think, Your Honor, at this point it would be  
14 devastating to his defense, to his sentencing, to after ten  
15 years of facing indictment and complying with every single  
16 condition a court has ever placed on him. He's shown up to  
17 every court hearing. He's called in. He's dealt with his  
18 supervision. He has sat through two trials and come back  
19 and back and back. He has no hint of danger in terms of  
20 fraud while he's been out.

21 This is just a very odd situation that we -- you  
22 know, I have a feeling that Oregon is going to get to the  
23 bottom of it. And if it's possible, if we could delay the  
24 Court's decision until Oregon rules on it, I would suggest  
25 that. I would suggest the Court consider conditions of

1 release that would reassure the Court that there won't be  
2 service of process in a way that you think is improper.  
3 There can be conditions about his work with Mr. Philpot.  
4 There can be conditions, you know, keeping in mind that if  
5 you prohibit him from doing what he's been doing for the  
6 last ten years, he literally has no way to support his  
7 family. And, you know, he is working insane hours. He's  
8 scraping together a living. He's trying to put money away  
9 in case he ends up having to go to prison ultimately.

10 Judge Block has already indicated on the record to  
11 all the parties that it's his intent to allow Mr. Koerber to  
12 remain free pending his appeal, and that's based on the fact  
13 that we have a very legitimate argument on statute of  
14 limitations, and Judge Block has recognized that and stated  
15 it on the record.

16 THE COURT: For what it's worth, just so everybody  
17 knows, I have spoken with Judge Block about this matter,  
18 personally spoken to him about it, and he's asked me to  
19 handle this. He's well aware of the circumstances. Just so  
20 you know.

21 MS. NESTER: Thank you. I'm glad you've talked  
22 with him. I was not sure about that.

23 So I think to take something of this nature that  
24 was clearly brought to this Court's attention by lawyers who  
25 have something to gain, and not by any law enforcement, not



1 by any other normal route that we get complaints, it's just  
2 beyond the pale, Your Honor. This man, to have put up with  
3 an ongoing prosecution for over a decade and still respect  
4 the Court in every way, and still come, and still sit and be  
5 respectful to all the parties, which he's always been, it  
6 just seems to me like, Your Honor, if there's ever going to  
7 be a chance where someone gets a pass and has increase of  
8 conditions -- there's all kinds of conditions that are not  
9 on him now that we could add to make Your Honor feel secure  
10 and comfortable that he is not -- I can't have him violate  
11 attorney-client privilege, but we could have him check in on  
12 where he's working. We could have him check in daily. You  
13 could put restrictions on him about what type of work he can  
14 engage in.

15 But to lock him up is going to make the sentencing  
16 impossible for all of us who need to defend him. I can't  
17 express to you how critical it is to have him available and  
18 present and assisting us as we prepare his case for court.  
19 It's beyond my comprehension, especially when his lawyers  
20 are so dependent on his personal knowledge.

21 I mean, it goes back decades, this evidence,  
22 decades, and it's dealing with victims that he has to  
23 understand all the proceedings that they've gone through.  
24 He has to go through all the promissory notes. I mean, the  
25 thought of doing that in a jail cell is devastating to

1 defense counsel. I'm just going to tell you that on our  
2 behalf. I don't know if that's something you're going to  
3 take into consideration, but it's absolutely true.

4 I don't know if it would -- I don't know. That's  
5 irrelevant right now. But I honestly think, Your Honor,  
6 there are conditions Your Honor could place on him that  
7 would convey the seriousness of your concern about this  
8 situation that would reassure the Court that -- and we're  
9 only talking about a few more months. We're only talking  
10 about the summer and the beginning of the fall, in the scope  
11 of the last ten years. If there's a way we could restrict  
12 him in some way where you feel like he's been punished or  
13 warned sufficiently.

14 I don't even think this Court would suggest that  
15 the evidence submitted in this court today would be  
16 sufficient for a jury to find guilty beyond a reasonable  
17 doubt. And I know that's not the standard you're tasked  
18 with, but it's something important to think about in terms  
19 of, you know, is this a way to get someone in jail without  
20 having to go through the problem of making a case and  
21 prosecuting them when you know you can't do it.

22 THE COURT: Well, that's true, Ms. -- I'm not  
23 trying to argue with you here, Ms. Nester, but I just want  
24 to respond to that. But you realize that we're not on a  
25 normal, level playing field here. It's not that Mr. Koerber

1 is being brought in here to be prosecuted on this charge and  
2 he has no other dealings with the system. I mean, obviously  
3 this comes in the context of everything that's gone before.  
4 So obviously it's not the same, and we're not looking at it  
5 as a stand-alone prosecution. And all of us who were  
6 involved in that understand that. But I do appreciate the  
7 point you're making, but it's kind of apples and oranges.

8 MS. NESTER: Also, Your Honor, as far as, you  
9 know, the pattern and practice, this is not connected in any  
10 way to his allegations of FranklinSquires. This is  
11 something -- this is not connected at all to that conduct.  
12 It's not like he's gone out and redone something again that  
13 he's done before. That's just not the case.

14 And, you know, you want to talk about a hard  
15 lesson learned, you've got a lawyer trying to do what  
16 they've been hired to do, and even told to do by a  
17 practicing, licensed lawyer trying to make the right call.  
18 And, you know, the thought of taking away his liberty over  
19 that, when there's no notice to even him that what he's  
20 doing is wrong, if that needs to be resolved, it can be  
21 resolved civilly.

22 These lawyers have a remedy, Your Honor. They  
23 have no interest in whether or not Mr. Koerber goes to jail  
24 or doesn't go to jail. It won't impact those lawyers at  
25 all. It's not going to make their case any better or worse.

1 The facts are the facts.

2 Mr. Philpot has been honest with you about what  
3 the facts are. We've laid them out. We've given you the  
4 documents. I mean, the Court has the facts. It's not going  
5 to help the lawyers in Oregon if Mr. Koerber goes to jail.

6 THE COURT: Ms. Nester, just as a -- I know I talk  
7 too much, but that's just me.

8 MS. NESTER: So do I, Your Honor.

9 THE COURT: You know, one of the things I learned  
10 years ago when I was in the U.S. Attorney's Office is that  
11 every good citizen has a motive, but sometimes,  
12 notwithstanding their motive, they still might be providing  
13 information that there's a problem.

14 I will tell you, I want you to be confident, I  
15 want Mr. Koerber to be confident that irrespective of the  
16 motives of the law firm in Oregon -- and I'm not taking  
17 sides on that issue at all because it's not, quite frankly,  
18 really in my wheelhouse. I don't care about that lawsuit  
19 per se. It's not under my jurisdiction. It's not something  
20 that's involved in our court. It's important to those  
21 people who are involved in it, obviously, but not to me.

22 So what I am concerned about, though, obviously,  
23 is what Mr. Koerber has done relative to his participation  
24 in the filing of the appeal. But beyond that, I'm not here  
25 to assist those lawyers, or to assist that court, or any of

1 that. I just want to be clear that they may have good  
2 motives, they may have bad motives, I don't know. I don't  
3 care. I'm more concerned about the conduct that's alleged  
4 here, or that I have found by probable cause now at this  
5 stage, and how that relates to the ongoing issue of whether  
6 or not you have met your burden.

7 MS. NESTER: Sure. Also, Your Honor, I think it's  
8 important, and I think the timing is super important, and  
9 Your Honor mentioned this, and I think it goes to motive as  
10 well, the timing is that is Mr. -- in one of the exhibits  
11 we've -- well, we didn't introduce it because it's sealed.  
12 But as Ms. Carr testified, his defense counsel sent  
13 probation his financials on February 28th. On  
14 February 28th, he revealed everything about Corvus. The  
15 entity number. Gave his position with Corvus. Turned it  
16 over to his probation officer that was writing his pretrial  
17 report. I'm sorry, his probation -- presentence report. I  
18 just blanked. I'm sorry. So she had that.

19 So then she issues a probation -- a presentence  
20 report on March the 1st. We end up forwarding that to our  
21 client either the 1st or the 2nd -- I actually don't know  
22 what day we sent it -- and he immediately contacts  
23 Mr. Belcher -- and Mr. Belcher has testified here -- that  
24 his probation officer has a problem with the fact that  
25 Corvus's registration has expired. So the first business

1 day that happens, they go and reregister, because probation  
2 told him to.

3 So the timing of the registration had nothing to  
4 do with when this service of process was done. Corvus was  
5 operating when the receipt was given. Mr. Koerber indicated  
6 that it was from Corvus, and he provided all of this  
7 information to the Court. None of this was hidden. He gave  
8 his bank records, his bank statements, and none of this has  
9 been followed up by probation at all.

10 THE COURT: However, Ms. Nester, it's true that  
11 the registration expired in 2013, did it not?

12 MS. NESTER: Yes, absolutely.

13 THE COURT: And so it goes on for now five and a  
14 half, six years, whatever the time is, only to be renewed,  
15 coincidentally, at the time that the service has taken place  
16 in Oregon.

17 MS. NESTER: It's renewed at the time the  
18 probation officer put a paragraph in his presentence report  
19 saying you've let this lapse, your registration has expired.  
20 So he went and reregistered the next day.

21 THE COURT: But your witnesses have made a big  
22 point, Ms. Nester, that there's nothing illegal about that.  
23 He's not required to do it.

24 MS. NESTER: That's correct. He did it to make  
25 his probation officer happy, because she's the one who held

1 it against him in his probation report. We were concerned.  
2 We objected to it. We submitted an objection to probation  
3 and said take this out. You're making it look like he's  
4 doing something wrong because a registration has expired,  
5 and there's nothing wrong with that. And she wouldn't take  
6 it out, so he went and fixed his registration the next day.

7 THE COURT: How about in Oregon?

8 MS. NESTER: What about in Oregon?

9 THE COURT: Does it make a difference whether or  
10 not it's registered -- the delivery service is registered to  
11 do business in Oregon?

12 MS. NESTER: I have no idea. I don't know.

13 THE COURT: Okay.

14 MS. NESTER: I just don't know the answer to that.

15 THE COURT: I don't know either. That's why I'm  
16 asking you.

17 MS. NESTER: I don't know. I would think not  
18 because his place of business is Utah, and normally you  
19 don't have to register everywhere you do business if you're  
20 a company. But I just don't know. I would hesitate to tell  
21 the Court that and not know.

22 THE COURT: But, Ms. Nester, can you see what's  
23 troubling to me a little bit here? This seems, with all due  
24 respect, to be kind of a tortured reasoning here, in my  
25 opinion. Mr. Philpot tells us that he gives Corvus, in this

1 case, Mr. Koerber, well over \$200 to effect the service of  
2 process on the notice of appeal. Now, you know, he could  
3 use FedEx or some other means, but he chooses to use Corvus.  
4 And in reality, the evidence suggests that Mr. Philpot could  
5 have just as easily e-mailed it himself to Ms. Peltier,  
6 because that's all that Mr. Koerber apparently did.

7 MS. NESTER: But he didn't know what  
8 Ms. Peltier -- if she was a commercial delivery service. It  
9 has to go through Corvus to engage the Oregon statute.

10 THE COURT: But Mr. Koerber got Ms. Peltier's name  
11 from Mr. Philpot, right?

12 MS. NESTER: As a subcontractor, someone that  
13 lives in Oregon.

14 THE COURT: It just seems to me to be a rather  
15 tortured process, that Mr. Philpot spends well over \$500  
16 right at the cusp of losing the time limit to file this  
17 appeal and goes through this process that's been described  
18 here today as opposed to simply either, one, filing a motion  
19 for an extension or, two, sending it FedEx.

20 MS. NESTER: There's just no dishonesty on the  
21 part of Mr. Koerber, though. I mean, his receipt is  
22 legitimate. It reflects exactly what happened.

23 THE COURT: Well, that's where you and I disagree,  
24 obviously because of my finding earlier, in terms of the  
25 date of the business being registered, the date of his doing



1 business, and so on. But that's --

2 MS. NESTER: I respect your ruling. I'm not  
3 trying to reargue it.

4 THE COURT: I understand that. I understand that.  
5 But anyway, I keep interrupting you. It's because I want to  
6 hear --

7 MS. NESTER: That's okay. I want you to interrupt  
8 me. I want to tell you whatever you need to hear so this  
9 man doesn't get locked up.

10 THE COURT: I understand. Go ahead.

11 MS. NESTER: I just feel like, Your Honor, this  
12 has been a really long road. And I think, you know, just  
13 like you can take into consideration the facts of this  
14 situation, you can also take into consideration the last  
15 decade of this man's respect for the orders of the Court,  
16 and respect for the probation office, and respect for the  
17 prosecution. He shows up. He responds. He replies. You  
18 know, I just don't know what more this man can do,  
19 Your Honor. And I just feel like at this point there are so  
20 many options available to you.

21 If you look and see, I think he only has one  
22 condition right now of release.

23 THE COURT: That's correct -- well, two actually,  
24 the standard condition, which was involved here, and then of  
25 course the one condition concerning the passport.

1 MS. NESTER: So you have so much power at your  
2 disposal to craft something that's reasonable but not more  
3 than necessary to make sure that this man can help us get  
4 ready for his sentencing. And on behalf of the defense  
5 team, we're begging. Whatever we can do to make the Court  
6 satisfied and happy, we will do it. So please consider your  
7 options, and please consider how to ratchet this up. I've  
8 seen Your Honor revoke people, and I've seen you give people  
9 chances.

10 And understand, it's not easy to walk into a  
11 courtroom in shackles. It's not easy to know that your  
12 freedom lies with Your Honor. And if you feel comfortable  
13 that you've conveyed to Mr. Koerber what you need him to  
14 hear and in any way you see fit, just so that he can assist  
15 us with this sentencing, which is probably going to be the  
16 most complicated sentencing I've ever done in my career, it  
17 would just be such a help and so good for the due process of  
18 this case to just resolve it. And let's get it done, and  
19 let's get it sentenced, and let's not have any more appeals.  
20 Let's just do it right now. Because, obviously, if  
21 Your Honor -- you know, if his freedom is at stake, then it  
22 triggers all these other steps we have to take. And we just  
23 need to focus on the sentencing. We need to get this done.  
24 We need to get it resolved. This case has been here a long  
25 time, Your Honor.

1           You want to talk about the Sword of Damocles, I  
2 think is what it is, the Sword of Damocles is hanging over  
3 this man's head. It's been a decade. He's exhausted.  
4 Please let us just finish this and not make it even more  
5 complicated. And I think I'm done begging now.

6           THE COURT: Thank you, Ms. Nester.

7           MS. NESTER: You're welcome.

8           THE COURT: I believe Mr. Clark is going to argue.

9           MR. CLARK: Yes, Your Honor.

10          Your Honor, what's troubling to the United States  
11 about his conduct is that it seems to fit a pattern. The  
12 Court is well aware Mr. Koerber was convicted of fraudulent  
13 activity in connection with a \$100 million Ponzi scheme.  
14 And the Court may also be aware, as was a significant part  
15 of the trial, that prior to this case, he had difficulties  
16 in Wyoming in which he entered into a consent decree of  
17 which he admitted that he was not being honest with the  
18 people he solicited as investors there. He was not giving  
19 truthful information.

20          Our concern is that this is the same kind of  
21 thing, Your Honor. There is something just plain shady  
22 about what's going on. There's something shady about this  
23 receipt, page 13 of Exhibit 1. It looks like it's an  
24 arm's-length transaction between Morgan Philpot and a  
25 company named Corvus when in reality it's his paralegal who

1 is completing the delivery service for what apparently  
2 amounts to \$500, which is simply e-mailing it to somebody in  
3 Oregon who they met and trusted because that person attended  
4 the Bundy trial. There's something shady about that.

5 I'll just say that upstanding members of society  
6 do not operate this way, Your Honor. They don't do this  
7 sort of thing, and even more so when they have been given  
8 the opportunity to remain out on bond after they've been  
9 convicted of a \$100 million fraudulent scheme.

10 In our estimation, Your Honor, Mr. Koerber is  
11 still acting like he's above the law, and he is doing  
12 whatever he can get away with. It just so happened that  
13 someone was doing some digging on him in this and brought  
14 this to the Court's attention. Because of that, I don't  
15 think he can meet his burden, Your Honor.

16 There have been other instances that we have set  
17 forth in the sentencing memorandum that we've already filed  
18 in this case. In 2011, his landlord accused him of  
19 backdating utility checks.

20 MS. NESTER: Your Honor, I'm going to object to  
21 going back to conduct that's relevant at sentencing but not  
22 relevant to this revocation.

23 THE COURT: Well, I'm going to allow him to do it  
24 because, Ms. Nester, this is relative -- I mean, he's trying  
25 to, I think -- I'm not making his argument, but I think he's

1 trying to say, in essence, there's a pattern of fraud or  
2 deceit here, and he's trying to demonstrate the pattern.

3 MS. NESTER: But the problem is he's about to  
4 bring up an incident that they're alleging for the first  
5 time in their sentencing memo, which we've never had a  
6 chance to rebut in this court, and we haven't had a chance  
7 to investigate that.

8 THE COURT: Well, then I'll give it whatever  
9 weight is appropriate, based on what you say, Ms. Nester.  
10 And I'll give you a chance to comment on it, if you'd like,  
11 later too.

12 MS. NESTER: Thank you.

13 THE COURT: Go ahead, Mr. Clark.

14 MR. CLARK: Thank you, Your Honor.

15 As part of that same incident with the landlord,  
16 the landlord said that Mr. Koerber submitted a false invoice  
17 for contractor work on the home. The contractor did not  
18 exist and the work had never been performed.

19 Then also, as we laid out in our sentencing  
20 memorandum, in 2016, Mr. Koerber was involved in a trial in  
21 Oregon assisting an attorney there. Counsel for that trial  
22 wanted Mr. Koerber at counsel table, but also wanted him as  
23 a witness. And the court executed -- or entered the  
24 exclusionary rule. And he was on the witness list as  
25 Claud R. Koerber, and yet he still attended proceedings

1 under the name of Rick Koerber. Once the court in Oregon  
2 found out about that, that allegation became part of the  
3 order to show cause against the lawyer there.

4 So what I'm trying to describe, Your Honor, there  
5 is a pattern of Mr. Koerber seeming to do whatever he thinks  
6 he can get away with. And it seems almost laughable to me  
7 that we are going to try to craft conditions now to try to  
8 make him behave honorably and not do shady things. He was  
9 already supposed to be on his best behavior, and the  
10 standard now reflects that. And I don't think that he can  
11 meet by clear and convincing evidence that he's going to  
12 continue to be an upstanding member of society, because he  
13 wasn't before. So we think he should be detained at this  
14 point, Your Honor.

15 THE COURT: Thank you.

16 Ms. Nester, I'll give you the final word.

17 MS. NESTER: Your Honor, as far as all those  
18 matters that the government just stated, they did not object  
19 to his release, knowing all that information, when we  
20 finished the trial. That would have been the time to bring  
21 that up if they thought he shouldn't have been released.

22 Furthermore, we disagree with their  
23 characterization of what happened. That lawyer was not  
24 found to have done anything wrong, as far as Mr. Koerber was  
25 found, and it did not result in any type of contempt or any

1 kind of finding against Mr. Koerber. And if the Court wants  
2 to get into those two incidents, then maybe we could have  
3 another hearing and I'll go investigate those and deal with  
4 that. But I think it's pretty disingenuous to stand up now  
5 when they agreed to his release, knowing about whatever they  
6 think he did before, and then all of a sudden now to be  
7 morally offended by it. It seems very disingenuous to me,  
8 Your Honor.

9 THE COURT: Okay.

10 I've listened carefully to the evidence today. I  
11 have carefully reviewed the documents that were submitted by  
12 the government earlier. I have listened to both sides'  
13 arguments and the testimony, and so forth. It seems to the  
14 Court that we are in a position where we have to look at  
15 Mr. Koerber in the totality of the circumstances relative to  
16 whether or not he remains on release or whether or not he is  
17 detained. When I say the totality of the circumstances, I'm  
18 talking about, as I referred to with Ms. Nester, the fact  
19 that he comes here today having been convicted in a trial  
20 last year of a number of felonies involving fraud, deception  
21 and so forth, as opposed to just coming before the Court on  
22 a case of first impression. So we have to put all of this  
23 in context, at least that's the Court view of it.

24 While I don't put a lot of weight on these other  
25 instances that Mr. Clark alludes to, Ms. Nester, they are

1 part of what I call a pattern of deception. I don't know  
2 the details on all of those. I know that individually each  
3 one can probably be explained to one extent or another, or  
4 mitigated, or litigated. But the fact of the matter is --  
5 there's an old adage that where there's smoke, there's fire.  
6 Not always, but sometimes. But the problem is, that I see,  
7 is that at the center of all of this, Mr. Koerber continues  
8 to be at the center.

9           It would seem to me, in my modest judgment, that  
10 if I had been convicted of serious crimes of fraud, as  
11 Mr. Koerber, and then had been allowed by the judge, in this  
12 case Judge Block, to be released pending sentence, that I  
13 would be, as they say, on my very best behavior. I would do  
14 all in my power to ensure that I did not run afoul of the  
15 law in any way, simply because I would suspect that I would  
16 be on, to use a phrase, relatively thin ice.

17           Unfortunately for Mr. Koerber, apparently that  
18 analogy of thin ice might be something he's used to. I  
19 don't know. I'm not saying that in a flippant way, but  
20 perhaps he's just used to being on thin ice and it's not as  
21 frightening to him as it would be for many people. I don't  
22 know. But for whatever reason, the circumstances of this  
23 whole scenario -- and I have to agree, Ms. Nester, with what  
24 Mr. Clark said -- it just has a ring to it. It has an odor  
25 to it, for want of a better word. It just doesn't look



1 right to me, and I've been doing this for close to 45 years.  
2 It just doesn't add up.

3 Yes, there's certain explanations, but the fact of  
4 the matter is we hear from Mr. Skousen that there's a  
5 deadline, he's used to working right up against the  
6 deadline. We hear from Mr. Philpot that he's willing to pay  
7 large, relatively speaking, large sums of money to have  
8 Corvus do this as opposed to simply e-mailing it himself,  
9 and so on. It doesn't add up, in my mind. That's why I  
10 found that there's probable cause to believe there was  
11 deception, that there was an attempt -- not an attempt per  
12 se to violate the law, but, in essence, an attempt to  
13 deceive, which was, in fact, a potential violation. I don't  
14 know.

15 But the bottom line is, for me, that I'm finding  
16 that the government brings this to the Court in an  
17 appropriate manner. And what I'm saying by that is that it  
18 was appropriate for them to bring that to the Court's  
19 attention. I don't think it was brought in bad faith. I  
20 don't think it was brought gleefully, for want of a better  
21 word. I think that they were presented with information,  
22 and they brought it.

23 At the same time, I've given a lot of thought to  
24 this matter in the last ten days or so since I have been  
25 informed about it. It seems to me that some of the pattern

1 of deception, as I refer to it, that in this particular  
2 instance it was somewhat nuanced and somewhat layered.

3 Now there may be reasons why Mr. Koerber wants to  
4 use a variety of names, some legal, some aliases, and so  
5 forth. Not all of those reasons would necessarily be  
6 negative or bad. But the fact is that most law-abiding  
7 people don't use a lot of different names. They just don't.

8 According to the documents, the opposing law firm  
9 was not aware that who they thought they were dealing  
10 with -- I believe they thought it was Mr. Franklin -- was a  
11 convicted felon, that he'd been convicted of serious fraud.  
12 They allege in their documents that they would not have  
13 shared certain discovery with him had they known his status.  
14 But he didn't disclose that to them.

15 Then we have the problem with the dates. And I  
16 don't have to enumerate that, but I think it's clear that  
17 Corvus was operating, by Mr. Koerber, as a so-called  
18 delivery service, even though that's not what the business  
19 purposes stated. It's not stated as a business purpose.  
20 It's stated that it's a business and management facility.

21 And so he enters into this agreement to file this  
22 certificate on the 2nd, this dispatch, and yet he  
23 reregisters on the 6th. The timing is suspect. It would  
24 appear to me that it was not the arm's-length transaction  
25 that you would have expected based on the testimony of all

1 the witnesses and the documents. And I do believe that  
2 there was some attempt to deceive the court in Oregon, not  
3 the law firm per se, but the court, in terms of the filing.  
4 That's what I believe. Whether that's provable at a higher  
5 level of standard than probable cause is neither here nor  
6 there because I don't have to deal with that. But I do  
7 believe that. And I think that that document may or may not  
8 have been backdated. It doesn't really matter because, as I  
9 say, that's not before me per se, other than I've already  
10 found the probable cause.

11 The problem that Mr. Koerber has is that he has a  
12 presumption of detention with a burden of proof by clear and  
13 convincing evidence.

14 Now Ms. Nester makes some very strong points,  
15 particularly that it would be very difficult to prepare for  
16 sentencing, review documents, and the like. I'm very  
17 sensitive to that. I know that's real. That's not just  
18 puffery. That's real. However, there's a litany of cases  
19 that suggest all kinds of things that don't qualify as  
20 extraordinary circumstances to prevent detention, including  
21 health issues -- post conviction detention including health  
22 issues, and including, what you named Ms. Nester, family  
23 support issues. It goes on and on.

24 So in my mind, really -- and these are legal  
25 concepts that you try and apply fairly, and intellectually,

1 honestly, at least I do, and I'm sure we all do -- does  
2 Mr. Koerber meet his burden or is he such a danger to the  
3 community, and it would be a financial danger, it would be a  
4 fraud danger, that there's no basis upon which we can let  
5 him remain out.

6 Based on what we've heard today, I find that the  
7 defendant has not met his burden of proof by clear and  
8 convincing evidence. I do find that he's an ongoing danger  
9 to the community relative to financial fraud or deception.  
10 I find that the facts as laid out in the paperwork today  
11 merited more weight than the testimony that was presented,  
12 and that those facts suggest that Mr. Koerber has yet to  
13 learn, or change his ways from a pattern of deception and  
14 fraud that's gone on for a number of years.

15 Not only does this constitute a violation of the  
16 order not to commit any other state, federal, local crime by  
17 a probable cause standard, but it makes me wonder about his  
18 commitment to obeying all of the orders of the Court, even  
19 though in the past he has done so, at least ostensibly.

20 So I am ordering his release revoked and I'm  
21 ordering him detained in the custody of the United States  
22 Marshal Service for the time being. Now I'm not foreclosing  
23 a review of that detention, but let me explain ahead of time  
24 what I'm interested in.

25 The pattern of deception, as I call it, has to

1 end. It just has to end. No more fraud. No more  
2 deception. This has been going on too long, and today ends  
3 that. So I need to be assured, Ms. Nester, that there will  
4 be no additional fraud or deception on the part of your  
5 client between now and the time of sentencing, of any  
6 kind -- of any kind.

7 I can tell you that he's done, from my  
8 perspective, in terms of working in any legal related areas  
9 where he has opportunities to file documents, or to date  
10 documents, or to be involved in any of that. If I were to  
11 release him down the road, I'm telling you ahead of time,  
12 that's not going to happen.

13 I'm not sure exactly what it would take to  
14 convince me to release him, but I can tell you that I would  
15 have to be persuaded that we're not going to have any  
16 ongoing -- even anything close to resembling fraud or  
17 deception. We just can't have it. We just will not  
18 tolerate it.

19 With all due respect to Mr. Koerber, he's not a  
20 big deal. He's another white-collar defendant who has  
21 committed, according to a jury, serious fraud, and has been  
22 convicted. He doesn't merit or warrant special attention,  
23 even though he's been going through this process for years.  
24 And I'm sympathetic to that fact, I truly am, but he is  
25 still like any other criminal defendant who is under the

1 supervision of the Court, has responsibilities to walk that  
2 line very carefully or lose their right, particularly post  
3 conviction. We're not even talking pretrial release. We're  
4 talking post conviction here.

5           That's what troubles me perhaps as much as  
6 anything. If this was a pretrial release matter,  
7 Ms. Nester, your argument would be so much stronger, in my  
8 mind. There are additional restrictions, and so on. But  
9 right now I'm looking at this post conviction, and I'm  
10 looking at that standard and that burden of proof that falls  
11 on the defendant, not on the government. There is a clear  
12 shift of the burden, and a high standard. I find it  
13 ironic -- I'm losing my voice here. I find it ironic that  
14 you two struggle with very different standards today, the  
15 government having a very low standard of probable cause and  
16 the defendant having a very high standard of clear and  
17 convincing, and the burden shifts, which is very unusual in  
18 our business, but it does, according to the statute. And I  
19 have looked at those statutes carefully. I'm trying to  
20 intellectually and fairly apply those statutes.

21           So I'm saying I am, again, sympathetic to all the  
22 consequences, but there are consequences, and Mr. Koerber is  
23 now experiencing those consequences, and many of them are  
24 very difficult. And I do not make light of it, I do not  
25 take pleasure in it, but I recognize it. But, nevertheless,

1 I have to be honest with you. As I've told so many  
2 defendants over the many years I've been on this bench, we  
3 make our choices, but we don't get to pick our consequences.  
4 Mr. Koerber has made some choices, and now this is one of  
5 the consequences.

6 So I invite you, Ms. Nester, I invite you at some  
7 time down the road -- not Monday morning -- if you want to  
8 file a review of detention and give me your best reasons why  
9 he should be released, I'm more than happy to hear it, and I  
10 will carefully consider it, because I want to be fair. But  
11 I also need to be fair to the government, and to the  
12 taxpayers, and to the public, and to people both in this  
13 state and in Oregon, and everywhere else, in Wyoming, where  
14 people rely on representations, and where money and life  
15 savings are involved. So I'm interested in protecting  
16 people and the community, and right now the best way to do  
17 that is for Mr. Koerber to be detained, and that's the order  
18 of the Court.

19 Now in terms of timetable, I would say no sooner  
20 than a minimum of three or four weeks, I want some time to  
21 think about this some more, but I think for the -- and I'm  
22 not saying what I'm going to do, but I am willing to have  
23 you apply for reevaluation. I'm not saying what I'll do,  
24 but I'll give you some time to put your facts together. I'd  
25 like to hear a little more detail on some of these other

1 things.

2 The other thing I want to say is unrelated to the  
3 issue before us, but we have an evidentiary hearing set for  
4 17, 18; is that correct?

5 MS. NESTER: Yes, sir.

6 THE COURT: And my understanding is that at some  
7 point you people will be submitting briefs.

8 Has that happened?

9 THE CLERK: No, not yet.

10 THE COURT: What date did we set for that?

11 MS. NESTER: June 4th.

12 THE COURT: June 4th. Okay.

13 Now to the extent, Ms. Nester, that you need help  
14 with Mr. Koerber, I am willing to have him brought to the  
15 courthouse -- not to San Diego, but to the courthouse, for  
16 you to be able to go over documents, as necessary, to work  
17 in preparation for that hearing. I know you're in San Diego  
18 most of the time, but Ms. Oberg, or Mr. Hunt, or somebody,  
19 can notify the Court and we can set up a schedule to do  
20 that. I do not want his detention to interfere with your  
21 ability to prepare for that hearing. So please let your  
22 colleagues work with me and we'll figure out a way to best  
23 accomplish that.

24 MS. NESTER: Thank you, Your Honor.

25 THE COURT: Okay.



1 MS. NESTER: May I just ask one request? So I'm  
2 going to have a really hard time getting that road map ready  
3 by June 4th now. Is there any way I could have an extra  
4 week and just get it to you the week before?

5 THE COURT: Well, you see, the fact that you're  
6 asking for the continuance ahead of the deadline, I'm going  
7 to give it to you.

8 MS. NESTER: Thank you.

9 THE COURT: Okay?

10 MS. NESTER: Yes.

11 THE COURT: So here's the deal. I'll give the  
12 government the same time. Maybe you're ready by the 4th.

13 You're both looking a bit perplexed.

14 MS. HACKFORD-PEER: Well, the filing Ms. Nester  
15 needs to give to us on the 4th, we need that information to  
16 prepare for the evidentiary hearing. So that now gives us  
17 four days with that information. I can't add this, but if  
18 she has another week now, that gives us a very limited  
19 amount of time with that information.

20 THE COURT: Well, if necessary, we'll set it back  
21 just a little bit, the hearing. But I don't want to do that  
22 if we don't have to. Look, I'm trying to be fair here. I  
23 know that she's been heavily involved in the last week in  
24 preparing for this hearing.

25 MS. NESTER: Yes, sir.

1 MS. HACKFORD-PEER: We can make it work,  
2 Your Honor.

3 THE COURT: That's what I love to hear. That's  
4 what I love to hear. So that's what I want, if you'll make  
5 that work. And then we'll try, as best we can, to still  
6 hold that hearing on the 17, 18. If not, we might move it  
7 just a little bit.

8 Just as an aside, did we work out the victim side  
9 of the case?

10 MS. HACKFORD-PEER: We were very close when this  
11 happened, Your Honor.

12 MS. NESTER: We were an hour away until the  
13 warrant came down, Your Honor.

14 THE COURT: Well, I'll give you an hour right now  
15 to sort it out. But the fact is, I would like you to  
16 continue to work on that part of it. But, you know -- and,  
17 look, I don't need major briefing on this thing. I just  
18 want a road map, kind of a sense of where we're going, what  
19 you're anticipating and so on, so that we can be  
20 appropriately prepared for it. And I realize you need a  
21 little time to respond and so on, so we'll try to  
22 accommodate you.

23 All right. Ms. Hackford-Peer or Mr. Clark,  
24 anything further today from the United States?

25 MS. HACKFORD-PEER: No, Your Honor.

1 THE COURT: Ms. Nester, anything further from you?

2 MS. NESTER: No, Your Honor.

3 THE COURT: All right. Thank you all.

4 The Court's in recess.

5 (Whereupon, the proceeding was concluded.)

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C E R T I F I C A T E

I hereby certify that the foregoing matter is  
transcribed from the stenographic notes taken by me and is a  
true and accurate transcription of the same.

PATTI WALKER, CSR-RPR-CP            DATED: 6-7-19  
Official Court Reporter  
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